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STANDING COMMITTEE ON THE OMBUDSMAN

ORGANIZATION

MONDAY, FEBRUARY 29, 1988



STANDING COMMITTEE ON THE OMBUDSMAN

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Lipsett, Ron (Grey L) for Mr. MacDonald
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Clerk: Decker, Todd

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witness:

From the Office of the Ombudsman:
Meslin, Eleanor, Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, February 29, 1988

The committee met at 10:10 a.m. in room 151.

ORGANIZATION

Madam Chairman: If we could call the meeting to order, each member of the committee should have before him three pieces of documentation. The first one is the expanded jurisdiction paper which has been submitted by the Ombudsman. The second one is one that has been submitted by our research officer, Catherine Evans. It is just various Ombudsman jurisdiction issues. She has spanned the different provinces and what jurisdiction each Ombudsman in those provinces has. The third piece you should have before you is a memo dated February 29, 1988. It is to the chair and it is regarding expanded jurisdiction as well. It encompasses the different agencies and groups the committee might want to hear from, if it considered public hearings to discuss the expanded jurisdiction issue. That memo is three pages long. If you are short any memos, the clerk will be happy to provide those for you.

I thought we might start first, today, dealing with the issue of expanded jurisdiction and, if we decide to consider it by the committee--and I think we decided in December that we would consider it--the procedure by which we will consider the expanded jurisdiction issue. I thought we would start with Mr. Bell giving us a brief outline of how this issue has come before the committee and then have a response from the Ombudsman's office. We have Elinor Meslin, the executive director, here before us today. Then discussion could ensue after that procedure.

Is that acceptable? Any complaints? No? Seeing no disagreement with that procedure, Mr. Bell.

Mr. Bell: Members, I think it would be useful to give you some chronology and detail for background in respect of the committee's consideration of the expanded jurisdiction issue and the Ombudsman's position, historically, in that regard.

I can assure you the issue is not new. If you want a reference for background material, the fourth report of this committee, tabled in May 1978, was a report to the House exclusively on an extensive fact-finding trip that the committee undertook in Scandinavia, England, Scotland and Israel on a number of Ombudsman issues, one of which, front and centre, was expansion of jurisdiction. The Ombudsman of the day, Arthur Maloney, had, in 1977, urged the Legislature to expand his jurisdiction, I might say in an extensive way, to all "local" governments and any boards, agencies and commissions that may be covered thereunder.

That, together with the committee's relative inexperience in Ombudsman matters, prompted it to decide that, first of all, it was going to visit jurisdictions that had ombudsmen exercising local government functions, among other things, to see for itself. The committee returned and in its fourth report concluded that there was merit in the concept, if you will, of an Ombudsman for so-called local government issues. The committee saw and spoke at some length in that report of some significant practical difficulties. It

concluded, among other things, that an Ombudsman exercising jurisdiction over provincial matters should not exercise jurisdiction over local government matters. In terms of any substantive findings and recommendations, that is as far as it went in 1978.

The issue of expanded jurisdiction fell into the background over a number of years. As you know, Mr. Maloney resigned later in 1978 and was succeeded by Mr. Morand, who did not address the issue at all during his tenure. The interim Ombudsman appointed after Mr. Morand did not address it, and it was Dr. Hill, in late 1985 or early 1986, who raised the issue again, for the first time.

That brings me to the second basic piece of chronology, the paper you have already had distributed to you, Dr. Hill's September 23, 1986, paper. By the way, there are four areas of jurisdiction that Dr. Hill addresses: municipalities, the Ontario new home warranty plan, public hospitals and children's aid societies.

On the first one, it is fair to say he adopted the view that jurisdiction for his office in that area was a matter he was not about to address, at least for the moment. I am not sure what his personal views are on whether his office should have jurisdiction over municipalities, but it is not something he has urged upon the committee or the Legislature as of this date. As for the other three, however, he had very specific recommendations, based upon certain reasoning, statistical data, etc., making a case for at least a meaningful consideration of those areas within an expanded jurisdiction.

If I might just dwell on some things that he urged the committee to do, on page 30 he says: "In considering the question of expanded jurisdiction, I believe the committee should decide which areas ought to receive priority consideration. Once these priorities are established, I would suggest the committee invite those groups who would be affected by expanded jurisdiction, namely, the agencies themselves, and groups who are users of the service, to obtain their views."

He then touches upon the three areas he has centred in on. Then, at page 31, he states: "I believe the committee's deliberations on expanding the Ombudsman's jurisdiction may be the most important activity it has undertaken in its history. The Ombudsman has been functioning in Ontario for 11 years without any change in mandate. In this time, much has changed in Ontario. The province has become more ethnically and culturally diverse, government has expanded, we have a new Charter of Rights and Freedoms, and people appear to be much more concerned with their rights and how government functions and performs. I believe in these times of change and at this point in the development of the Ombudsman's office it is appropriate to review the scope of our mandate and expand it."

The last part of that sentence is significant, "It is appropriate to review the scope of our mandate and expand it."

The committee, in 1986, discussed the matter with the Ombudsman and among members and in the committee's 13th report, dated April 11, 1986--that is a report which predates Dr. Hill's formal report--having raised the expanded jurisdiction with the committee previously, at pages 9 and 10 of that report, he goes on to say:

"In his 12th report and when he appeared before the committee, Dr. Hill raised the issue of the expansion of the jurisdiction of the Office of the

Ombudsman. Dr. Hill has not yet recommended that his jurisdiction be expanded....Rather, he believes it is timely for a full discussion of the issue."

The committee goes and reviews what I referred to, in part, in its 4th report in 1978. Then the committee had this to say: "While this committee has not yet decided whether the concept of Ombudsman is appropriate for local governments in Ontario, it does agree with the select committee on the Ombudsman that a further review of the issue, with input from appropriate persons affected, is essential. In the committee's opinion, there are three issues which need to be addressed."

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I might say that these three issues have been carried forward in discussions up to the late part of 1987. The three issues are as follows:

"(a) Is there a need for expansion of the jurisdiction of Ombudsman in Ontario to include other provincially constituted organizations;

"(b) If there is such a need, what is its scope; and

"(c) Who should perform the function covered by the expanded jurisdiction?"

So whether, how wide and who, I guess, to put it simplistically.

Then the committee had this following recommendation in its 13th report: "It will undertake a review and consideration of the question of the expansion of the jurisdiction of the Ombudsman or an expansion of Ombudsman functions in Ontario. The committee intends to conduct such public hearings where and when it considers it appropriate."

That is what you said in April 1986. I am not sure of the status of this report vis-à-vis the House beyond its tabling.

Nevertheless, in the committee's 15th report, also in 1986, this time in December, after formally receiving the Ombudsman's paper, on page 19 of that report the committee repeated the three issues: whether, how wide and by whom. You then reference the position paper that Dr. Hill filed with you in September, and at the bottom of page 19 you had the following to say:

"The Ombudsman believes strongly, however, that any process undertaken by the committee to consider expanded jurisdiction should include participation by members of the public and the specific interest groups who would be most directly affected. While the committee is not yet in a position to comment on the suggestions made by the Ombudsman in his position paper, it does concur with him that it is timely to thoroughly consider the issues of expanded 'ombudsman functions' in this province. The committee sincerely appreciates the careful consideration which the Ombudsman has given to the matter of expanded jurisdiction and is looking forward to considering this matter further in the near future."

What does all of that mean for today, at least in terms of what previous committees and previous members have said, some of whom are members today? Mr. McLéan, Mr. Philip and Mr. Bossy, I know, participated in those discussions.

I think a fair summary is that the committee recognizes that, after now

more than 10 years, it is timely to examine the question of the Ombudsman's mandate and the Ombudsman has put a question to you as to expanded jurisdiction in three very specific areas. The committee has already said that, because there needs to be a thorough consideration of the mandate question, of course those three areas should be included.

You have been urged very, very strongly by the Ombudsman to include as part of your deliberations the receipt of briefs, representations, submissions or whatever from affected groups, not only the groups targeted by the Ombudsman for expansion but also the groups who would be affected by the operation of those groups.

If that is a given and accepted, I think your hearings have two focuses, if you will. What I view the more important and general focus is the area of expanded jurisdiction in general terms: Is there a need for same? You cannot undertake that on your own. I think you are going to have to hear from groups and individuals. I am not sure exactly who yet, but I think you have to wrestle with that and then, if you will, zero in on the specific three areas that have been posed to you and then, I guess, as part of both of the issues, who should do it.

One of Dr. Hill's positions is that you have an Ombudsman's structure already in place. Why reinvent the wheel and duplicate costs and expenses? That is one view, and I know there are others asserting the need to have the provincial and municipal jurisdictions kept separate.

I think that is probably a fair review of the chronology. I suggest the question is not whether you are going to consider this issue but when, in what detail and to what extent.

Madam Chairman: Thank you. I just want to point out that, in volume I of the annual report of 1986-87, where the Ombudsman refers to the expanded jurisdiction question is on pages 12 and 13, for those of you who have it before you.

Mrs. Meslin, do you have any comments on this issue?

Mrs. Meslin: The only comment I have to make is one that Dr. Hill asked me to bring to this committee, and it follows what John Bell has said. That is, some of the pressing problems that we have encountered, more so since his paper but certainly before, have been problems that have been brought to us by the native constituency, particularly in relation to children's aid societies, both on the trip we made to the north and, more recently, through our native liaison officers and through the expanded numbers of native groups that are now coming to us because of our program. They have expressed to us very keen desire and need for the Ombudsman to have some kind of jurisdictional mandate as it affects children's aid societies. Dr. Hill just wanted to put to this committee the fact that his thrust has been, of course, native concerns. It has come again and again, to his personal knowledge and to the knowledge of the people working in the office, that this is a need that must be addressed.

Other than that, in the area of hospitals he has underlined in his report--and again we are having more experience with them--people who now are resident in psychiatric units of public hospitals who have come to us and had us turn them away, only to be told that if they were in psychiatric institutions, over which we do have jurisdiction, we could investigate their complaints. Of course, we cannot if they are in psychiatric units of public

hospitals. We have had a number of those inquiries, which seem to be increasing, as we now have an investigator who looks at the developmentally handicapped, the disabled and psychiatric hospitals.

I just wanted to make those two comments for Dr. Hill.

Mr. Lupusella: May I raise a question in relation to the statement which has been placed before us? If as a committee we are supposed to take into consideration the expanded role of the Ombudsman in relation to areas so described in the Ombudsman's report, did you make any study in relation to the total expenditure which is required to implement this expanded jurisdiction? How much is it going to cost?

Mrs. Meslin: We have not done it in terms of expenditure. What we did, as you can see from Dr. Hill's paper, was to try to estimate the number of staff we would need to increase that jurisdiction. Our overall total, I think, was something like 10 investigators and three support staff if all of these three areas were expanded.

Now, that is a supposition. We had to try to give the committee some kind of guidance, but my sense of it is that it is a very awkward way of being able to do it, because you make suppositions based on what you are doing now. With children's aid societies we are doing nothing now, and only from the number of people who approach us did we make some suppositions. So it is a very difficult thing to try to do.

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Mr. Philip: Was there not a jurisdictional dispute between the Ombudsman and HUDAC home warranty program such that the Ombudsman thought he had jurisdiction over the HUDAC home warranty program and followed up on an investigation only to be stopped by the HUDAC home warranty program on grounds that they do not recognize this authority? I wonder if you can review that with us.

Mrs. Meslin: I am afraid I cannot, Mr. Philip, only because, although I know there was a jurisdictional problem with a particular case where we did, as you say, try to assert our jurisdiction and did investigate, in fact we ended up having to bring it back to this committee eventually for them to look at and make some kind of direction for us. I think it was during that time. Since then we have had the same kinds of problems, but I think that is what raised the issue of the HUDAC problem. We do not get a lot of inquiries, but it is just that there seems to be absolutely nowhere for these new home owners to go to complain.

Mr. Philip: So you are in the kind of situation you were in with--what was it?--the public trustee at one point, where you feel that you have jurisdiction and you are, in fact, trying to carry out investigations at the present time, but you are being stifled by an organization that says you do not have jurisdiction.

Mrs. Meslin: I do not think the analogy is to the public trustee, because, as far as we are concerned, that was some difficulty with a particular public trustee. But I think that what you say is correct in terms of our feeling that we have the jurisdiction and are trying to assert it, only to have the agency say we do not.

Mr. Philip: So what you are really asking for vis-à-vis the home warranty program is a clarification that the jurisdiction that you think you have and that you are trying to exercise you do, in fact, have, so that you will not run into further roadblocks from the home warranty program. Is that correct?

Mrs. Meslin: I think that over time we have looked at it and our legal people have looked at it. They have told us we do not have and we should have.

Mr. Philip: OK. So it is now back to where you do not have it.

Mrs. Meslin: Yes, that is right.

Mr. Philip: OK. In the other two areas that you are asking for jurisdiction, you clearly do not have jurisdiction at the present time. You are asking for jurisdiction and you are denying--

Mrs. Meslin: We clearly do not have it.

Mr. Philip: --any dispute as to jurisdiction in either the hospitals or the children's aid societies?

Mrs. Meslin: That is correct.

Madam Chairman: Before I go on with the next questioner, what I propose in our questioning--and it seems to be keeping along these lines--is that we first deal with the issue of whether we want to deal with expanded jurisdiction and, if we do, what is the scope, with respect to the paper that is before us, in the areas mentioned? Second, let us go into the process of how we are going to do it if we decide we are going to do it.

Mr. McLean: Yes, I think the first thing we have to find out is if there needs to be an expansion. How are we going to find out whether there does need to be an expansion of his jurisdiction? I find that a case we dealt with here in 1986, where they have jurisdiction, has gone through the whole process. It has gone to the Ministry of the Environment and it is still sitting there. That is about two years.

If we have jurisdiction over certain areas now and cannot get the answers we want, and we are talking about expanding the jurisdiction, maybe what we also should be looking at is tightening up the jurisdiction we have now to make it work. It is not functioning properly in all areas. So I say that the support paper that a researcher has put before us today probably should be expanded on in other jurisdictions to find out what they are doing in other countries with regard to the jurisdiction they have. Does it take in hospitals and children's aid societies? She could find that through research. I know Mr. Callahan is kind of indicating that he wants to go have a look in Asia or something.

Mr. Callahan: No, I was asking you where you would like to go. It sounded as though you were prepping for a trip.

Mr. McLean: No. I was just saying that we could get that information through our research, and I would like to have a look at it.

Madam Chairman: Are you looking at the area of expanded jurisdictions in other countries, and also the enforcement of what they currently have jurisdiction in, how they follow up on decisions that are made?

Mr. McLean: How it is enforced and how it is operated, that is right. Those are the two key areas I would like to zero in on. Also, what scope are you going to use?

Mr. Philip: I am sorry, I am not clear on what you are asking for.

Mr. McLean: OK. What I am asking for is this: Are the hospitals and children's aid societies in other jurisdictions now included in the--

Mr. Philip: I understood that part; I was talking about the first part, something about the Ministry of the Environment not working.

Mr. McLean: I can take you back and indicate the case that we had with [name withheld], where we had dealt with it through the committee stage. It went through all the hearings, went through where we made recommendations. I wanted to find out, because it has not been dealt with by the ministry in over two years. How are we going to make sure that is the function he is operating under now and it is not being enforced?

Mr. Philip: We have a way: that is, by passing our reports in the Legislature. Unfortunately, the last three reports have not been scheduled in the Legislature.

Madam Chairman: First, Mr. McLean, perhaps you could make sure that that reference to the company is deleted in Hansard. Second, we do have the Ministry of the Environment officials. I understand your frustration with this, and I am sure we will be able to get a little bit of it off tomorrow. We hope that they do come forward tomorrow and that we have an avenue to speak with them on this very case. But we understand your frustration. Not all the members before us today have the history of it with regard to that. Has your point been clarified, Mr. Philip?

Mr. Philip: No. I did not realize he was referring to what we are dealing with tomorrow.

Madam Chairman: Recommendation-denied cases which have not been dealt with yet.

Mr. McLean: Nor did I realize it was being discussed tomorrow.

Mr. Elliot: I have a couple of points to Mrs. Meslin, if I might. There are a couple of things I would like to have clarified, if you would help me a little in this regard. I can see how the extension of the mandate of the Ombudsman to the hospitals is quite a logical kind of extension because of psychiatric departments that are not being looked after, and we are looking after the psychiatric departments in other types of hospitals. That seems like a logical extension to the mandate.

What I am trying mentally to come to grips with is the children's aid societies, it being primarily directed towards native peoples in northern Ontario. A large number of those native people must be band people, and a lot of their liaison is not really with the Ontario government but with the federal government. I think I need a lot more background information on how the children's aid societies in those areas are impacting upon the Ontario scene and the Ontario government.

The other part of the children's aid area where I would need more clarification in order to make any sort of judgement is that I envisage an

individual under the jurisdiction of a children's aid society in my own region, for example, who is having a problem. How would that problem come to the Ombudsman if that child was not being looked after by the children's aid society? The problem is that it is a regional matter, in our region anyway. I think they really go to great lengths to satisfy the needs of the clientele in the region, but I do not know who would bring a child's concern to the Ombudsman's attention if they were not being satisfied in the region. How would that happen?

Mrs. Meslin: To answer your first question first, in relation to native children, if native children, whether on or off reserve, are being mistreated or if they have to be taken into care, they are taken into care by the provincial children's aid societies in the particular areas. It was originally brought to our attention because a number of years ago the Kenora Children's Aid Society had tremendous problems internally with the native community and with their administration. We had numbers of native parents saying to us: "There is something wrong with the administration in this organization. Our children are being taken away. We don't have the rights that we thought we had to raise the issue. We would like to come to the Ombudsman." Our response at that time was, "We can't do anything for you."

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Those parents, under other circumstances, could have gone to the Ombudsman to say, "They took my child and I think that I wasn't given a fair hearing," or "There was a decision made about my child that I think is unfair." None of these decisions, as they relate to a particular children's aid society, can be investigated by the Ombudsman, whether it is just administratively or otherwise. What has happened in many instances in the far north is that we have had parents come to us to ask us about the functioning of the children's aid society organization in their area, the manner in which children's aid society boards are appointed, the unfairness of an appointee or whatever. We cannot look at those; we cannot look at them at all. The only thing we can look at is whether there is some way for the Ministry of Community and Social Services to look at it in that particular area.

What was the second question? How they complain?

Mr. Elliot: I was just wondering, and you have partially answered, how the complaint comes from my own region. It would be by the parents, obviously.

Mrs. Meslin: Generally that is right, or an MPP may come to us to say: "I see some problem within the organization of the society. Its administration is functioning strangely"; or "I have a particular complaint about the way in which they handled something. Can you investigate?" And we cannot.

Mr. Elliot: Do you keep track of how many such queries you have had over a period of time so that we can get a handle on how pressing the problem is, or is it just an impression?

Mrs. Meslin: The numbers we keep track of are, of course, the jurisdictional complaints, which are few and far between for the most part, because when the call originally comes in, we have no jurisdiction. The jurisdictional complaint may be one that affects something like that, and we can go to the Ministry of Community and Social Services in order to look at a particular kind of situation; but they are rare. With the informational calls

that come in, the only thing we have kept track of is that some of them relate to children, and that is a very broad mandate.

We do not have that kind of figure. We just know that our people all across the province are constantly telling people, "No, we can't look at that," so the people get used to the idea. In answer to questions from the community groups we speak to, we always say: "No, we have no authority over the hospitals. No, we have no authority over children's aid societies."

Mr. Philip: My question to you, Mrs. Meslin, is that a few years ago there was an extreme case where the minister had to put the children's aid society under trusteeship. Do you feel that if you had had jurisdiction at that time, you would perhaps have been able to resolve matters before they got to the point where the minister actually had to go in and take over the whole children's aid society? No matter which side of the issue you were on, it was extremely disruptive. I am not saying the minister was wrong in what he did, but it certainly was a very dramatic and disruptive kind of stand to have things go so far that he felt compelled, that the only thing he could do was to take it over.

Mrs. Meslin: That is a specific case, and I do not know what we would do in it. All I can say is that in other ministry areas where there is a systemic or a severe problem, the Ombudsman has had great success in being able to sit down with the parties at one stage or another during an investigation and arbitrate or settle the problem one way or another before it goes any further. He has had a lot of success with that because he has great co-operation from ministries now in terms of talking to them.

Madam Chairman: In answer to your question, Mr. Elliot, Catherine Evans has had some discussions on how the need is in other provinces.

Ms. Evans: Yes. Perhaps I can just enlighten you a little bit. In talking to the other ombudsmen's offices throughout the country, I was interested in how many complaints they receive in the area of child welfare matters. In all of the other jurisdictions except Ontario and Quebec the ombudsman's office does have authority to deal with child welfare matters. All of them report that it is a major area of their work. It is also an area many of them consider a priority, because they see children as some of the most vulnerable people in society. They give it priority and it is a large area for them.

Mr. Callahan: It has been a long while since I have been on this, but I recall this was an issue back in 1985, I guess, when I was sitting on this committee. My recollection is that before the Ombudsman has any jurisdiction--I just want to make sure I have the ground rules right--a person has to have exercised all the rights he has through the courts, etc.

Mrs. Meslin: Not the courts, no; through all the statutory appeal procedures that are available for him. Even if there is a court alternative, a person can choose the Ombudsman rather than the court, if he so desires.

Mr. Callahan: All right. When you say they have to pursue all of the statutory procedures they have, what do you mean by that?

Mrs. Meslin: For example, in a workers' compensation case, if the worker has been turned down at the adjudication level--

Mr. Callahan: He has to go to the next level.

Mrs. Meslin: --he has to go to the next level. He has to go to all the levels within that area and then come to us at the end of that appeal procedure.

Mr. Callahan: If I understand you correctly, they have to go to all of the levels within the administrative framework, but they are not required say, to go to a court, a judicial review or whatever before they come to the Ombudsman.

Mrs. Meslin: That is right, they are not required to go to court.

Mr. Callahan: I think the report is an excellent one, but I have concerns about that. I do not know what discussions you people have had in terms of the merits of this, or the lack of merits of it, but my concerns are these: particularly with public hospitals, there are trustees or members of the board who are serving from the local community; if you were to provide this expansion of jurisdiction, you would in fact be allowing a person to jump over that local responsibility. Really, if those people are doing their jobs, they are the ombudsmen for the community in terms of the public hospitals.

I knew Mr. Philip would have his hand up.

Going into other areas, such as municipalities, although I note that is not a preference of the Ombudsman, we get into great discussion about that as well. People are elected as members of the local boards of municipalities. They are accountable every three years for what they do or do not do, and they really are the ombudsmen of the people.

It is the same thing with us. If we are doing our jobs correctly, doing them responsibly and to the best of our ability, in effect, we are ombudsmen for the people who elected us.

The concerns I have about expanding the jurisdiction is not that Dr. Hill and his staff would not do a good job, because I think they would, but I think they would be viewed by the public as the place to go. You bypass everybody else. I think that would make people who are supposed to be carrying out this responsibility fat and lazy, because they really would not be doing the job they were responsible to do.

As much as I understand the similarities, to expand it beyond where you can have the Ombudsman being used as a person to go to in cases where institutions are directly funded or directly under the control of the provincial Legislature is really taking those responsibilities away from the people who are really responsible for them.

The final thing I would say is in response to the comments you made about the courts. I recognize that not everybody has the means or perhaps the acumen to go to a court to have his rights protected, but I would have some concern that really what you would be doing is removing a good deal of the responsibility from the courts and placing it, perhaps, in the hands of an independent body, i.e., the Ombudsman; and eventually if the Ombudsman made a decision that somebody was unhappy with, they could probably go from there and then on to the courts. Is that right?

1050

Mrs. Meslin: Can I just make a correction? You are correct when you say there are people who cannot afford it; but far more important, I think,

are the areas of the Ombudsman's jurisdiction that relate to maladministration of particular ministries, boards and agencies that could not be the subject of any court hearing. The courts are very clear on a number of those instances where the person really does not have--we are not talking about error of law or the particular merits but, in many cases, there is the claim that the particular agency has not done what it should have done in terms of its administrative procedure. In those instances, there is no going to the courts. The person does not get a remedy in the courts.

Mr. Callahan: So you are saying that this is not something that is a question of law, or a lack of jurisdiction, that a person is denied a remedy?

Mrs. Meslin: That is right.

Mr. Callahan: Are they not provided with a remedy in terms of, let us say, the political level? Parliament works on the basis of ministerial responsibility and accountability and if, in fact, some board under that minister's jurisdiction has not carried out in an impartial and a proper way certain functions, it then can become a matter of accountability for the minister. I would think that somebody writing a letter to the press would certainly have the impact to have that politician move rather swiftly to rectify that.

Mrs. Meslin: I think that is certainly one of the possibilities, but I think you have to also consider that in many instances where there is a charge of maladministration by a person going to the minister or going to the newspapers, it is really not the best way of doing it. First of all, we do not even know if the allegations are founded and, when they come to the Ombudsman, it is a twofold thing. Because of the Ombudsman's neutral stance--

Mr. Callahan: Fact-finding.

Mrs. Meslin: --you often find that after having investigated, the Ombudsman is fully supportive of the ministry and says that the ministry has acted perfectly reasonably, and explains it. We are sort of the outside influence that convinces the complainant he is not being sold a bill of goods by the people in the ministry he has talked to and who have tried to urge him that they have done it correctly.

You have both sides. You have the ministry being vindicated as it were, in many instances--in most instances, as a matter of fact--or you have the moral suasion of the Ombudsman, finding support for the complainant, being able to go to the ministry with that situation and have the minister or the ministry look at it in a different light than they would have with a complainant who just goes knocking on the door of the press.

Mr. Callahan: OK.

Mr. Philip: I just fail to see Mr. Callahan's concerns. First of all, the Ombudsman already has jurisdiction over some boards and agencies and, therefore, if the principle of his doing a review of boards' and agencies' decisions was a wrong one, then the time to change that would have been when the Ombudsman's office was started, not now.

If you want to follow that principle, then the Worker's Compensation Board, that we so frequently have before us, has an "independent" board that does review matters, but we still find errors and we still find that the Ombudsman has come down on the side of the claimant rather than the board on a few occasions.

If we look at removing from the courts, as Mr. Callahan has said, the very purpose of setting up an Ombudsman was so that ordinary people did not have to go to the courts. The courts are very expensive and very formal, and the whole concept of the Ombudsman is to act as a course of action other than the courts.

If we look at the analogous person to the Ombudsman from a point of view of the taxpayers, then it would be the Provincial Auditor. Mr. Callahan served on the standing committee on public accounts for a while and he knows that the Provincial Auditor has the right to go in and investigate complaints of mismanagement, squandering of taxpayers' money in a lot of agencies that receive transfers from the government that have their own boards.

We had a major inquiry, if I am not mistaken, when he was on the committee, that dealt with Algonquin College. Algonquin College has its own board of governors. Notwithstanding that, there was a major problem. You were not on the committee at that time, but that is an example where the provincial auditor and the public accounts committee deals with it.

As to ministerial accountability, anyone who has had experience asking ministers questions knows that they will quite often simply say: "There is a board and there is a due process. I am not going to involve myself because there is an independent board." I do not quite see it as the minister interfering in a board's independent decisions. The minister simply cannot investigate on his own every complaint that comes into his office. That is why the process of appeals is set up.

I sat on a hospital board for some 12 or 13 years. I have yet to have a complaint from a patient come to that board, be investigated by that board and be dealt with by that board. It may be done in other hospitals, I do not know, but I know in my own hospital it is not being done. It seems to me that when I go to the administrator with a complaint and I get back a report, I do not have the time to investigate the doctor or the nurse or the administrator on every minute detail of the constituent's complaint, so I send out the response from the administrator.

Invariably he says that the hospital did not commit an error and unless you have some kind of inquest or death, then you do not have any form of outside inquiry and the constituent leaves frustrated because he feels that it is an in-house inquiry and that invariably they will come down on the side of the hospital. Whether the hospital is right or wrong, it still gives that appearance. I suggest to you that hospital boards are not, to my knowledge, acting in the role in which the Ombudsman would suggest.

Mr. Callahan: Mr. Philip, I do not disagree with you. In a perfect world, it would be nice to have one person who could solve all of the ills of individuals, particularly those individuals who are perhaps not as powerful as many in our community. I think that would be marvellous. My greatest problem is, I have great faith in Dr. Hill's sensitivity and his concern about the expanded jurisdiction and he would do an excellent job, but we do not know who the next Ombudsman will be.

Mr. Philip: What does that have to do with it?

Mr. Callahan: What you are doing is setting up--or there is a suggestion here that you are setting up--rules that will be administered by the Ombudsman. Whoever that Ombudsman is is the person who will exercise that. I think what you are doing is removing the necessity for any or all of these other bodies that have been set up in our societal framework.

You could eliminate the courts and you could eliminate the children's aid societies because you have got this one person who is going to always become, for want of a better word--and I do not say this disrespectfully of Dr. Hill because I have great respect for him--Big Brother looking over the shoulder of everybody who is supposed to be doing his or her job in whatever function. If you do not do it properly, then you are going to be accountable to this particular person, the Ombudsman.

As I said, in a perfect society, it would be great to have someone who is caring and sensitive to provide quick relief with none of the nonsense you have to go through--I agree with you--in a lot of the areas now. But you cannot give a quick fix and then say to the rest of these areas, municipalities--I know that is not suggested as a priority--and public hospital boards, where you have trustees elected: "If you guys don't operate properly, then these people have access to the Ombudsman." If that became common knowledge, you would suddenly have the Ombudsman's office, by necessity, having to be one of the largest departments in the entire government. I think that is recognized by Dr. Hill, that there could be a significant increase in this.

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Some people say it is power building. I do not agree with that. I think Dr. Hill and his staff present this in a very fair and honest way; they want to see this expanded jurisdiction, probably for the same reasons you are suggesting, Mr. Philip, as well: there is too much injustice that takes place in our society because of the red tape of going through the civil service and so on.

But I think the real danger, I say that at the outset--and maybe I should not say it the first day here--is that you are turning these other institutions into ones that are going to actually make more mistakes because they are going to be acting under the trepidation that if they do not measure up to the standard of that citizen, they are going to go to the Ombudsman and they are going to have themselves reported in the press as not having done this or that. That frightens me. That is all I say in response.

Mr. Philip: You frighten very easily.

Madam Chairman: Mr. Philip, any response to that?

Mr. Philip: The arguments are so silly that they do not bear a response, almost.

Mr. Callahan: I need an Ombudsman after that comment.

Mr. Philip: Mr. Callahan obviously has not read the act. He has misinformed the committee. There is no attempt to eliminate the courts--

Mr. Lupusella: On a point of order, Madam Chairman: I think that this debate has to stop. It is a dialogue between two people.

Mr. Philip: If Mr. Callahan is trying to put untruths on the--

Mr. Callahan: I take exception to that. They are not untruths. They are my opinions.

Mr. Lupusella: The NDP is making the excuse of using an argument against my colleague which does not make any sense whatsoever. I hope that we are going to move and proceed with the discussion.

Madam Chairman: Mr. Lupusella, can we just have a comment from Mr. Bell on this point?

Mr. Bell: I do not want to--

Mr. Philip: I did want at least to give Mr. Callahan an opportunity to correct the record, because he has misinformed the committee.

Interjection.

Mr. Philip: You would not know the difference.

Madam Chairman: Mr. Lupusella, you just raised a point of order. Mr. Bell.

Mr. Philip: Are you going to give me an opportunity to inform the committee where Mr. Callahan has misled the committee?

Mr. Callahan: I would be happy to hear where I misinformed the committee, Mr. Philip. You go right ahead. I am sorry, Madam Chairman. I should not be ruling that; you should be.

Mr. Philip: As usual then, on your first day, I am sure you have not read the act. If you had read the act, you would have seen that you do not eliminate any of the other boards, that the Ombudsman only reviews matters after they have gone through the proper procedure in the other boards. There is no attempt to eliminate the court. The client, the grievor, has the right to choose either the Ombudsman or the court system, if he wishes. That is intact in every instance except where, by statute, they do not have recourse to the courts.

No one has suggested in the previous committee that we even bother looking at the municipal jurisdiction, but rather the previous committees said we should have hearings to see whether or not there is a need to investigate expanding the jurisdiction to children's aid, new home warranties and hospitals. I suggest that is the issue that is before the committee. The issue is, when are we going to set up our hearings and who are we going to invite to those hearings?

Madam Chairman: Thank you. Before we proceed, I would like a comment from Mr. Bell. I would also like to encourage the committee to keep its discussions right now to whether we are going to reaffirm the previous committee's commitment to discuss the issue of expanded jurisdiction of the Ombudsman. Then I would like to proceed with the areas that have been suggested, whether any of those areas are areas which we do not want to consider, if we decide to consider expanded jurisdiction, and the third, the process.

If we could, let us keep our discussions to those points: first, whether we want to discuss expanded jurisdiction globally, and second, what specific area. Let us try to keep our remarks to that.

Mr. Bell: I think Mr. Callahan's comments have focused on, if I may say on your behalf with all immodesty, the wisdom of the three issues that you

have already put in terms of the question of expansion, the first one being, is there a need for expansion?

I have said this before when the subject has been discussed here, and I say it again: I certainly contemplate a crawling up and down on both sides of that question, because it goes to the third issue: who should perform any expanded function? Because Dr. Hill has invited himself, what this committee needs to do, if it takes on this task, I would suggest as a starting point, is to spend a good deal of time with the Ombudsman and his staff and take an inventory in terms of how things are going now.

I only use this as a hypothetical: it would seem to me that if you were thinking of adding a route to a bus driver, you would want to make sure the bus driver knew how to drive and that the bus was in good mechanical condition. If I may apply that metaphor to the Ombudsman's office, I think you want to make sure that there is not anything that needs to be addressed there first. For example, I would like to know and I would like to ascertain, if it is possible, an effectiveness quotient, if you will, within the office: how responsive are governmental organizations to various things that are done?

In any event, the answer to any of these three questions is by no means a fixed and final one. What I think it does underscore, though, if I might suggest, is a need to apply your range of inquiry on the broader rather than on the narrower scale, because the end of the process will not just decide the issue of whether the jurisdiction should be expanded. The end of the process will serve--we might as well call it what it is--as an inventory and an audit of the Ombudsman's office over the past 10 or 11 years. I think that is a very important thing to do and to be done extremely well.

Mr. Bossy: I want to get back to really understanding better the jurisdiction of the Ombudsman. When I look at the act, especially section 15, it says, "The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization affecting any person, body or persons in his personal capacity."

I have read into this act that you have very broad terms of reference to deal with right now. I cannot seem to find the exemptions. I do not really know specifically--and I say this as a member--all the areas where you have jurisdiction and where you do not have jurisdiction clearly defined.

I would like to ask this in a broad sense: In all the areas where you have jurisdiction and where you have inquiries for the services that you presently deal with, how big a backlog do you have within all those areas of inquiry, within what the terms are presently for the Ombudsman? How far back are we in all the requests for help from the Ombudsman with the present staff we have, the present budget that has been established--all these things being a little bit relevant because money can make things happen a little faster?

Mrs. Meslin: In terms of backlog, we do not have the same measure as, for instance, the Workers' Compensation Board, where they have files waiting that have not been touched. As soon as something comes in, it is handled. It is handled in particular steps all the way through the process, but there is no backlog of cases that have come in and are sitting with nothing having been done on them at all. That is just administratively not the way we function.

Where we have difficulty is, as we are going through the process, there

are delays that in some cases the Ombudsman finds unacceptable, either because ministries have been sitting on the letters we have sent them or for one reason or another within our organization we are not functioning in some ways as quickly as we would like. So there is no backlog; there are cases that take a long time to complete.

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When you refer to the act, I think the operative phrase is "governmental agencies." It is the definition of that that determines the Ombudsman's jurisdiction. For instance, the children's aid society, at this point, does not fall under the definition of a "governmental agency." So the many areas we are excluded from looking at are definitional. We can go in there and say, "We think that's broad enough to have us look at it," and very quickly the legal section of particular areas will come back at us and say, "No way." In some cases, we have actually had to go and ask the court to determine whether we have jurisdiction, as with the Ontario Labour Relations Board. That is why the definition.

Mr. Bossy: Adding on the different areas we are talking about, especially the three, and knowing how sensitive and involved it would be to investigate or even the reluctance to have information brought to you, this could be an area where the Ombudsman is in a very poor position as far as delivery goes.

I am looking at some of these cases we dealt with in the past, which we hear have been one, two, three, God knows how many years, in process. My files are all active. As soon as I acknowledge receipt of the letter, that means I have seen it. But it is the process, to create the kind of additional bureaucracy, as I perceive it to be, to deal with that extra workload for a person who is at arm's length from the government. In other words, to make a decision and what will it do to remove--

I think Mr. Callahan hit on it partly when he said to remove, really, the responsibility, as far as making a decision at the board, at the appeals level, the different processes, because people today want to go the limit, especially if it does not cost money. Your load would become extremely heavy, and it is probably doing that even within your jurisdiction.

I am just wondering how extensive an expansion it would create, just looking at the three areas we are basically trying to zero in on. Expansion means three areas, but then when do we attach the school boards? That is mentioned. We have provinces where that exists presently, where the school boards are under the Ombudsman.

This is the start of a major expansion, not just a small addition. I think in dealing with it, when we talk about the expansion, we should talk about how extensive an expansion. We are not satisfying all the people out there now. We know that. After taking the other three agencies in, we will not be either, because the others are left out there hanging.

The perception of expanding the Ombudsman's jurisdiction, in the eyes of the people, will mean everything goes here now. It is that perception I am a little worried about, that expansion. First, a tremendous increase in cost. We are not saying doubling. It is going to be much greater than that, as I perceive this. Then there is the removal of responsibility of some of these appointed boards and agencies.

The reason I ask about the backlog, how long you are taking now over the years, what you have: if you add this, what kind of a personnel expansion and cost will that be to the government of the day? Look at the financing, because we are talking big money here, millions of dollars.

Mrs. Meslin: First of all, our estimate with these agencies is not an enormous expansion. We have said approximately 10 investigators and three support staff. I think it is not fair to say that if this committee decides in its wisdom to expand to these three areas, it is the edge of the wedge.

It is within the purview of this committee and the Legislature to make a determination about what they want done and what they do not. On the other hand, it seems to me it would be incorrect to say we should not be looking at the problems in the protection of children because if we do that somewhere down the road, we are going to have to do boards of education or any other area that is nonjurisdictional.

I think if the committee and the Legislature feel there is a need to expand in the area of children's aid societies, that is the area they would focus in on and not what is going to happen in the future, because it is still the Legislature that determines where the Ombudsman's power rests, where his jurisdiction rests. I think in this case what we are saying is that all of the other ombudsmen across the country, except in Quebec and Ontario, look at and have the authority to look at children's problems. This Ombudsman does not.

We want the committee to address that and decide, in its wisdom, whether he should. We believe in that particular area we can handle the case load with not a great increase in staffing. I would not deny for a moment that it would be misleading this committee to say, "Give us these areas, and with our hands tied behind our backs, we are going to do it without anything else."

I think the committee should also take into account the fact that the Ombudsman has expanded in his service to a great extent, in terms of the native community and in terms of adding field offices, all without requesting from this committee or the government any additional people. We have managed to go back into our own organization and say, "We can do it better, we can still maintain our service and we do not need more people."

We are now saying that if, in fact, the committee and government decided they wanted to expand in one, two, three or any of these areas, we would certainly need some more people, but I think we are now a fiscally responsible organization that would be very cautious about how we handled any kind of additional staff or our requests for same.

Mr. Bossy: The general public--and I am just going by the perception I have from people walking into my constituency office and on the phone--has very little knowledge really about where they can go or the limits they can go to to utilize the Ombudsman's office. I find in my own office that I cannot define that well the jurisdiction, where does the Ombudsman's office start and where does it end, in what areas and why. I have not read it in the regulations. The criteria are vague, and the public out there, which is going to depend more and more on the Ombudsman's office, is not that well informed.

Mrs. Meslin: I think that is one of the areas the Ombudsman is requesting the Legislature to look at in asking for change in the amendments and an additional amendment that will put into the Ombudsman Act the whole educational mandate.

Mr. Pollock: One thing I am a little curious about, and just kind of taking off from what Mr. Callahan said, if we expand our jurisdiction over hospital boards, would we not be automatically expanding jurisdiction over privately run and municipally run nursing homes? Or is that just another thin line there that we would not be able to cross?

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Mrs. Meslin: No. I think the same argument has been made about the fact that we now have jurisdiction over psychiatric hospitals but that does not automatically spill over into giving us jurisdiction over psychiatric units in general hospitals. The mandate is clear about where we have jurisdiction. If we had it in hospitals, that does not mean we would have it in nursing homes or groups homes or anything else. It is very clearly defined, as would be suggested.

Mr. Pollock: Just commenting briefly on what Mr. Philip said, I ran into a situation where a person who is working here in Toronto went to two different Toronto hospitals and got no response, no help at all. Eventually his girlfriend took him back to his home and the parents, in turn, took him to the hospital in Campbellford. They immediately transferred him to the emergency ward in the Peterborough hospital where he underwent an operation. I went to bat for him and tried to lobby for him and find out why he did not get better service. I did not get to first base. I really did not get to first base in getting any help for him.

Mr. Philip: Neither have some of the doctors at that hospital who have resigned from the board.

Mr. Pollock: One other thing, there are other provinces that have moved into this jurisdiction. Do you know if the expense of running the Ombudsman's office in those provinces has greatly increased?

Mrs. Meslin: I think in many of those provinces it was not a matter of them suddenly getting the new jurisdiction. It had been there. It was originally in their legislation so we cannot take a look at it and monitor it in that fashion. We do know, as Catherine has said, that those ombudsmen's offices that do any children's work have a great case load because the need is so great.

Mr. Pollock: In other words, by comparison, taking into consideration population, the workload is far greater in those provinces that have jurisdiction over, say, children's aid and hospital boards?

Mrs. Meslin: I do not know. I cannot make that statement.

Mr. Pollock: You have not made a study on that or checked that out.

Mr. Philip: We can go there and find out.

Mr. Callahan: In all those areas other than Ontario and Quebec, as I understand it, the social services and the children's aid societies are run under provincial legislation as opposed to Ontario, where it is a regional government responsibility. Is that right?

Mrs. Meslin: I think Catherine's report says something about Manitoba.

Ms. Evans: Manitoba has children's aid societies but they are under the direction of the provincial government. They are not as independent as in Ontario. Nova Scotia is the curious one because it has independent children's aid societies as well as the provincial child welfare system across the province. You cannot really predict what you are going to find, but there has never been any question that the Ombudsman in Nova Scotia has jurisdiction in relationship to children's aid societies.

Mr. Callahan: That is what directly gives the Ombudsman of those provinces the right to investigate children's aid societies, because it is provincial--

Ms. Evans: That is right. It falls within their general grant of jurisdiction.

Mr. Callahan: Just following up on that very quickly, is there any information as to how effective their children's aid societies are, say, vis-à-vis those of Quebec and Ontario, being under a provincial mantle as opposed to a regional mantle?

Ms. Evans: That would be very difficult to say.

Mr. Callahan: I am just curious.

Madam Chairman: Just before Mr. Elliot commences, I should just again draw your attention to the memo we have from Catherine Evans regarding other jurisdictions in other provinces. The last page of that memo does give something to focus in on in terms of what the other provinces do have jurisdiction over in comparison to Ontario, and that may just provide some focus.

Mr. Elliot: I would like to comment on the importance of the decision that we are coming to and the kind of question of clarification that I asked a little earlier in the meeting, I think, is very important. I found the report of the Ombudsman of September 23, 1986, very definitive and very specific with respect to four of the jurisdictional items listed on the table of contents on the research paper that we were given today. In reading that document, at this point in time the Ombudsman is in no way interested in getting into the area of municipalities.

Interjection: That is right.

Mr. Elliot: What he specifically states, with statistics to back it up, is the fact that there have been enough complaints brought to his attention from the Ontario new home warranty program and from the public hospitals--from the psychiatric parts of those--to warrant the extension, in his opinion, into those two jurisdictions.

With respect to the children's aid societies and the basis of the report, it is a bit ambiguous, and I think the comment that our solicitor made a little earlier is really a critical one here, that should we, as a committee, decide to conduct hearings on this question of expanded jurisdiction, there will be a certain amount of feedback with respect to the role that the Ombudsman is presently performing in the province. In the course of time, I think we would get a very good fix on how well that office is functioning at present and whether the expansion should in fact take place.

I submit that the only doubt in my mind coming in here this morning was

in the area of the children's aid societies. I think at this point in time, based upon the recommendation of the Ombudsman, we should at least decide that we should have some hearings with respect to deciding on this expanded jurisdiction question in the three areas that are recommended by the Office of the Ombudsman. I think we should focus in on that at this point, and if you would like a motion--

Madam Chairman: Thank you. Well done.

Mr. Elliot: --I would like to say that we should go through whatever formalities we need to get those hearings under way. I feel very strongly that we should do that.

Madam Chairman: I would entertain a motion at this point with regard to discussing expanded jurisdiction, and then I would like the rest of the day to deal with the areas, our procedure--public hearings being one way--the other alternatives and what groups we should interview if we proceed. If you would like to bring a motion, I would be pleased to take one.

Mr. Elliot: I move that this committee does decide to conduct public hearings into the operation of the Office of the Ombudsman with a view to expanding the jurisdiction of that office in the three areas that I specified before, the Ontario new home warranty program, public hospitals and the children's aid societies.

Madam Chairman: Do we have a seconder for that motion and then any amendment?

Mr. Philip: I will second it.

Mr. McLean: Could I hear the motion?

Madam Chairman: I will try it from memory--that the committee will entertain the expanded jurisdiction of the Ombudsman within the three areas outlined in the paper: the Ontario new home warranty program, public hospitals and the children's aid societies, and that we proceed on them.

Mr. Callahan: What about delegations?

Madam Chairman: And entertain delegations with respect to the issue of expanded jurisdiction.

Mr. Elliot: I said to hold public hearings to determine whether we should expand jurisdiction into those three areas.

Mr. Bell: Perhaps I can assist. I think the committee in its 13th report--and you now are saying the same thing, so it might assist in terms of continuity--in that report, at page 10, the committee formulated a recommendation that "...it will undertake a review and consideration of the question of the expansion of the jurisdiction of the Ombudsman or an expansion of Ombudsman functions in Ontario," the difference being whether this Ombudsman gets it or whether there will be some other office created, so you cover both sides.

"The committee intends to conduct such public hearings where and when it considers appropriate." The recommendation encompassed the public hearing issue. The recommendation was made against the statement of the three issues that the hearings will focus upon: Is there a need for expansion? If there is

a need, what is the scope? Who should perform the function covered by the expanded jurisdiction?

If that is what you intended by your motion, it might be, for continuity, more practical to restate that motion, or just for this committee to re-endorse by motion what was said back then.

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Mr. Elliot: I think I said the same thing, only I restricted it to the three areas.

Mr. Bell: Yes. On that point, the committee back then did not restrict it to the three points. When you get into it, there might be a need to--well, you might want to leave the question open.

Interjection

Mr. Bell: No, you do not want to leave the question open. Then you could amend this recommendation by--

Mr. Philip: Start looking at the world--

Mr. Bell: That is right. You are right. You could then amend this or qualify this recommendation to relate only to the three areas covered in the Ombudsman's paper.

Mr. Elliot: On a point of clarification: Is it your intention, in this afternoon's discussion on process, to accommodate the three areas, that kind of suggestion? I am wondering whether the general motion at this point would be sufficient. Then maybe we should talk some more about whether we should or should not restrict it to the three areas.

Madam Chairman: You are having a suggestion from Mr. Philip, and I was just allowing you an opportunity to think about it.

Mr. Elliot: My impression, obviously, at this stage of my thinking is that it should be restricted to three areas.

Madam Chairman: Why do you not present that motion in that form and then we will have a vote on it, with regard to restricting it to the three areas, adopting the resolution put forward by the committee in the 13th report and the subsequent 15th report, and qualifying the restriction to three areas which are HUDAC, the public hospitals and the children's aid societies?

Mr. Elliot: That would be my preference.

Madam Chairman: That is the motion on the table. Mr. Philip, are you still willing to second that motion?

Mr. Philip: Sure, I will second that motion.

Madam Chairman: Do we have any amendments to that motion before we try a vote on it? Is there any further discussion with regard to the motion as set out? Are we prepared for a vote?

Mr. Pollock: That does not in any way touch municipalities?

Madam Chairman: No. It is touching just HUDAC, public hospitals and children's aid, with regard to where, which types of hearings we will hold and on what subject matter.

Mr. Philip: I think if you do not restrict it, we are going to be flooded with representations on every topic in any way connected with the Ombudsman and you are not going to be able to deal with it. We only review this every 10 years, but I would rather we do three issues well. I am not prepared to expand his jurisdiction over municipalities at the moment. I think if we opened it up, we would start getting so many representations that we would just get bogged down and get nothing done.

Mr. Callahan: You would have trouble setting the advertising, too. Many repeats of the World at Large--

Mr. Philip: There would be a phenomenal advertising budget.

Madam Chairman: We would have to invent a new paper. The motion is on. Can we have a vote?

Mr. McLean: To clarify it, we are to hold hearings to justify whether we will be proceeding with regard to expanding the jurisdiction.

Madam Chairman: Right. Public hearings are one thing we will be using. I do not think we have excluded any other alternatives at this point.

Mr. McLean: That is what I want to clarify.

Mr. Bossy: We have narrowed it down to three jurisdictions.

Mr. McLean: That is right.

Madam Chairman: And just within the three, we have qualified where our process will take us in terms of the different areas.

Could I have a vote? All those in favour of the motion? All those opposed? Seeing none, the motion carries unanimously.

Motion agreed to.

Madam Chairman: I would like to suggest at this point, as we have restricted the three areas which we will consider, that the things I consider we still have are the public hearings, any other process that we might entertain in discussing this area, and which groups we should consider entertaining or what method of advertising we should go through.

Mr. Callahan: Certainly, in other committees I have served on, normally the subcommittee would meet and look into those issues. Then it would be open to I suppose any person, any member of the committee, who wished to submit names of specific groups they felt might be appropriate within the parameters of those three areas, to be specifically notified. You could also draft the advertising and bring it back to the full committee after the subcommittee had decided on it.

Madam Chairman: I take your point, Mr. Callahan, but this committee has not had an opportunity even to have any open discussion for the subcommittee to get a feel for what it is.

Mr. Callahan: That is right.

Madam Chairman: Because we have only today to discuss this issue, we thought people could voice their opinion. The subcommittee was more than willing to take on this task without a full committee meeting; Mr. McLean and Mr. Philip had both agreed to sit down and discuss this. But I think it would be appropriate to get some input from the other committee members on any ideas they might have here, so the subcommittee can go back, as time is pressing. We may want to entertain this question before the current Ombudsman leaves his post for another who may not be as experienced in the knowledge of this area. I think we would like some input from different members so the subcommittee can do a follow-up on it.

Mr. Bossy: Maybe there have been other Ombudsman committees before us which have visited other provinces. I am not the type to travel or traipse all over the country, but I would like at least to meet with the Ombudsman people in a minimum of two other provinces to ask questions in the areas they presently have under jurisdiction. I think that would help us to better define, of the whole list of people wanting to make representations, which groups may contribute more to our information to make a final decision.

I would recommend definitely that we visit a minimum of two provinces. We could decide among ourselves which ones. Maybe we could get more information about the length of time the Ombudsman has been dealing with that area within a province.

This is just a general recommendation. If there is a motion needed to that effect, I will gladly make that motion, that we visit a minimum of two provinces to get information about the present functioning in those provinces of those areas of jurisdiction we are now trying to add. We do not see any other provinces dealing with the new home warranty, but we sure see it with public hospitals and child welfare.

Madam Chairman: I think it is a bit premature for a motion for travel, but not premature to have made that suggestion. I think this is the type of input we need.

Mr. Pollock: I tend to support Mr. Bossy's comments that we should visit a minimum of two other provinces. I take it that if we have public hearings, they will be spread all over Ontario.

Madam Chairman: That is a suggestion we welcome, that committee members would like to hear.

Mr. Pollock: That would definitely be a suggestion. If we are visiting one of the western provinces, surely it could be tied in with making representation to the people, say, in Thunder Bay or that area of the province of Ontario.

Mr. Philip: I am not sure we would gain anything by going west. I think the two provinces where we are going to learn something are Quebec, because it has a population closer to ours and deals with the welfare or child issue, and New Brunswick, because it has both the child welfare and the public hospitals. I think if we visited both of those, we would get enough.

We can probably get some information from the western ombudsmen. I assume they will be at the convention in October. I do not know whether we want to delay this until that time, but certainly the chairman and some

members of the committee will be at that convention in October, hopefully, and may meet with some of the ombudsmen from the west then.

Mr. Pollock: I am not hung up on which provinces we visit, but I am a little surprised that Mr. Philip would say we would not gain anything by visiting the western provinces, if one of those western provinces happened to be Manitoba.

Mr. Philip: I do not think the issue is who is the government. We are surely not meeting with government. We are meeting with the Ombudsman and, whether it is a New Democrat, Liberal or Conservative government, the Ombudsman is the Ombudsman.

1140

Mr. Bossy: I can help resolve that. Maybe we should go to three different provinces whereby there is a philosophy of governing or jurisdiction. Maybe we should pick out Manitoba, New Brunswick and Saskatchewan. You have three different philosophies of governing. Maybe to satisfy the political--

Mr. Callahan: I probably sound like the Grinch who stole Christmas. In every committee I have ever chaired, we have never travelled anywhere other than maybe the four corners of the province. It would seem to me that there is no need to visit another province if the ombudsmen or someone from their office who is well attuned to what is going on there are able to come forward and testify. That way you simply cover their expenses to come before your committee here in Toronto.

You may have people in those provinces who want to come forward as citizens, and you are going to have a large group. But then you get into the question of how widely you are going to circulate the advertisement, which could cost you a little or a lot. With some of the committees I have been on, it has been \$40,000 just to circulate it in the major weeklies in the area.

Mr. Pollock: We would not have jurisdiction to do that, would we?

Interjection:

Madam Chairman: Mr. Bell on this point.

Mr. Bell: Can I give you the benefit of the experience of 1978? I am the only person in the room who went on that undertaking. There are two sides of the question when you go outside of your province. Yes, it is worthwhile to speak to the Ombudsman or the Ombudsman's staff, but predictably they will tell you, "Yes, we have it and it is working well" or "It is not working that well. We would like a little more." "We think we are effective" or "We could be a little more effective if we had more money."

It is enlightening, I suggest to you, to talk to your counterparts, either members of the assembly or members of the various institutions in respect of which jurisdiction is the question. That is what the committee did back in 1978 when it met with members of the Danish, Swedish, United Kingdom and Israeli parliaments and various public officials. You get a very rounded view. Of course, the question is, if you are going to talk to people in another jurisdiction, you either bring them here or you go to the mountain, as the case may be.

Mr. Callahan: I understand your point. That is probably different from the other committees. All right, I withdraw that.

Mr. Elliot: I would like to add a supplementary comment with respect to this item. When I weigh in my mind the relative merit of going outside the province in Canada, or outside the country on this matter, against the importance of being regional in our look at Ontario because of the size of Ontario--with 51 children's aid societies, for example--there is going to be a wide variance in the delivery of service there. I think we really have to take a very close look at that aspect of that particular part of the problem.

When you get to the psychiatric hospital kind of situation, it is completely different, when you are looking at the hospital scene, because the public hospitals are all under government jurisdiction. It is a different kind of flavour there. When we get to the Housing and Urban Development Association of Canada part of it, the province is chopped up into regions. Some of the regions could very well be being well served, as I think ours is, at the present time, by the Hamilton regional office. Because we have focused in on these three areas and because they are so divergent, I think we have to spend a lot of time thinking very carefully about where we go in the province and what we address by way of groups that come to see us when we are in those locations in the province.

It is a great big problem. As I said at the outset, I think the relative merit of spending a lot of time inside the province travelling around and really getting a fix on what is actually happening from the individual point of view--because I think the purpose of this committee is, when an individual runs into a problem with any sort of government agency, the Ombudsman's office is the sort of last resort they have--that provincial aspect of it is far more important than travelling to other jurisdictions, because Nova Scotia and New Brunswick, for example, are smaller really than the Metro children's aid society. That is what is coming into my mind. So their whole umbrella might be more or less related to the Metro children's aid society, and it might very well be easily done provincially as opposed to the kind of format we have in our own jurisdiction.

I would really like us to stress this regional visitation within the province, as opposed to going outside the province.

Mr. Lupusella: In relation to travelling, I would be more inclined to support the principle of a subcommittee travelling and visiting provinces which are important to the study this committee is going to undertake.

The other point I would like to raise is that in relation to the principle of people appearing before this committee, it is understood that we are going to invite agencies which are affected by the change or the statutory change which eventually has to take place. I hope we are going to include them and invite them to make presentations before the committee.

Madam Chairman: Thank you. Any further discussion on this point on ideas with respect to the process that should be undertaken dealing with expanded jurisdiction?

Mr. Bossy: In these other provinces, do they have similar Ombudsman and legislative committees?

Mr. Bell: No.

Mr. Bossy: That makes a difference.

Mr. Bell: I stand corrected. The only province that has a committee of long standing is Alberta and its function is extremely limited. I think I am still right.

Ms. Evans: Yes, it deals with the administration of the Ombudsman's office rather than on decisions and the merits of decisions as come before this committee.

Mr. Bell: There is not another province in Canada that has a committee that functions like this committee and probably not another committee in the world that functions like this committee in terms of relationship between an Ombudsman and parliament.

You raise a good point, Mr. Bossy, and that is, while you are there, if you go there, it would be interesting to engage your counterparts on matters Ombudsman.

Mr. Bossy: Interesting to know. I would like to know why they would not have a legislative committee that deals specifically with Ombudsman's matters where the Ombudsman and the government come at loggerheads, where there is no decision between the Ombudsman and the government. How do they resolve that?

Mr. Philip: I suspect that one of the answers might be that Ontario, with all of our political fighting, is very much less polarized than the other provinces and probably committees like this work better than in places like British Columbia. If you go to BC, for example, they boast that they actually sat six times and did not have anybody walk out. They are barely talking to one another. We take it for granted that the public accounts committee sits weekly here, and sure, there may be wrangles and disagreements, but you do not see the blood on the ground.

Mr. Callahan: That is not true, is it?

Mr. Philip: It is true now with the new committee, Mr. Callahan.

Madam Chairman: Thank you. I think what we will do is that the subcommittee will meet on this and take in the comments of the full committee. Also, could I encourage the committee to look over the list which has been provided by the Ombudsman's office. A number of groups are listed there on the three main issues that we will be considering, and if you are aware of any other groups, you could submit them to the clerk or to the chair so that we can make sure a specific approach is made to them.

The other point is that a fourth group of people should be consulted, given Mr. Callahan's views on the Ombudsman's expanded jurisdiction--I do not want to use the word "usurping"--taking over some of the powers of members of provincial parliament. That is one of the areas we should be looking at as MPPs before the committee on this issue. Perhaps, Mr. Callahan, you would be the first to sign up for that. I make that suggestion as well.

Mr. Callahan: And be subject to cross-examination by my good friend Mr. Philip? No way.

Madam Chairman: The subcommittee will meet on this issue. Tomorrow at one o'clock, the committee will be resuming. It is going to be discussing

matters outstanding from previous committee reports and anything else that comes before it. At one o'clock and 1:30 we have people already booked in, so I ask you to be here as promptly as you can. Mr. McLean, we will count on your being here, as you are the most knowledgeable on the Ministry of the Environment matter.

Until tomorrow, any further comments? Mr. Elliot?

Mr. Elliot: So the committee is not sitting this afternoon?

Madam Chairman: That is correct, the committee as a whole is not. I need the Liberal members to remain for just a moment, and if the subcommittee could remain, Mr. Pollock, you may depart. Thank you.

The committee adjourned at 11:52 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ORGANIZATION
ANNUAL REPORT, OMBUDSMAN, 1986-87

TUESDAY, MARCH 1, 1988

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Carrothers, Douglas A. (Oakville South L)
Charlton, Brian A. (Hamilton Mountain NDP)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
McLean, Allan K. (Simcoe East PC)
Philip, Ed (Etobicoke-Rexdale NDP)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Callahan, Robert V. (Brampton South L) for Mr. Henderson
Lipsett, Ron (Grey L) for Mr. MacDonald
Sola, John (Mississauga East L) for Mr. Carrothers

Clerk: Decker, Todd

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Meslin, Eleanor, Executive Director
Zacks, Michael, General Counsel

From the Ministry of the Environment:

Jackson, M. B. (Jim), Acting Director, Legal Services Branch

From the Public Service Superannuation Board:

Cooke, Basil V., Secretary

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, March 1, 1988

The committee met at 1:09 p.m. in committee room 151.

ORGANIZATION

Madam Chairman: The first thing I would like to do on the agenda is give a report of the subcommittee. Yesterday, you empowered the subcommittee to go off and make some decisions with respect to how we tackle the question of expanded jurisdiction within the Office of the Ombudsman. The subcommittee came to some main decisions and a course of action. Any input anybody has over the next few months would be welcome and would be of assistance, but we have a basis of an idea of how we will start out.

It was decided we would try to get two to three weeks during August. During that time, we would try to deal for one to two weeks with the cases-denied that will come out of the new Ombudsman's report, which will probably be tabled some time in June. During the last week or so of those two to three weeks in August, we will try to get a briefing with the Ombudsman, two to three days of which will deal with the current jurisdiction and the current responsibilities of the Ombudsman and how the Ombudsman envisions the expanded issue, the expanded jurisdiction, to affect the office and what the potential is for increase in workload or increase in the work it will be doing.

It was suggested that at least one of those two to three days should be spent at the Ombudsman's office to get a feel for the workings of the Ombudsman's office, the traffic that comes in and out and the type of procedure that is undergone by the Ombudsman. During that time, as well, we would try to meet with the ministries, the governmental agencies that are affected, for example, the Ministry of the Attorney General, the Ministry of Community and Social Services and the Ministry of Health, and try to deal with them as to how they see these new expanded jurisdictions affecting the ministries.

Then we would try to hold public hearings during September. The estimated time would be three to four weeks and we would advertise for these public hearings in the French and English Ontario dailies. There is one French daily and 42 English dailies. It was determined the estimated cost to advertise for that would be about \$10,000. We would do French in the French daily, English in the English dailies and not do it bilingually in each paper. We would also advertise in any native papers that can take English advertisements for the north to try to get the native population to respond to our public hearings.

It was decided we would try to do our public hearings in five locations, two in the north--the two that we suggested were Timmins and Thunder Bay because they are the easiest to be filtered into from the east and the west of northern Ontario--and that we would try London, Ottawa and Toronto to do southern Ontario, the west, east and central.

In addition to the advertisement, we would also send out letters to the interested agencies we have on the list and would welcome, as we said yesterday, any additional members you think should go on the list. With that

we would send a letter, perhaps a copy of the advertisement and a copy of the expanded jurisdiction paper so that they would have an idea what it is we are expecting from them if they want to present at the public hearings.

The last thing that was decided upon, although no schedule has been set yet, was to have meetings with ombudsmen and legislative counterparts in two other provinces. The ones suggested by the subcommittee were Manitoba and New Brunswick, Manitoba because the children's aid society in Manitoba is the closest to that which is in existence in Ontario, and the one in New Brunswick because the public hospitals are being overseen by the Ombudsman in New Brunswick and we might get most value by going there.

Certainly, this is not cast in stone, but that is the brief outline we have scheduled and I thank the subcommittee for it. Certainly, we would respond to any input other committee members have and will circulate it to regular committee members as well. I do not think there is any need to have a motion to adopt that report, but any discussion you have in regard to that would be welcome at this time.

Mr. McLean: If I can just speak briefly, I think you have outlined in very good detail the discussion that took place. I know it took a lot of time to try to iron out a lot of the problems we could foresee. I think what you have relayed to us today would be best, considering all the circumstances involved. I really think a motion from this committee accepting that report would probably be in order because it is important that we have the support of the whole committee on what your recommendation is.

Mr. Callahan: What were the three areas you were going to visit?

Madam Chairman: In Ontario?

Mr. Callahan: Yes.

Madam Chairman: There were five locations. The two northern were Timmins and Thunder Bay, the east and west of northern Ontario where people can feed in with a minimum amount of flight changes.

Mr. Callahan: In light of the fact that you are also advertising this in the newspapers that serve the native community of this province, we might consider some point a little further north. I think flying is great for perhaps a lot of people, but for economic and perhaps even other considerations, if we really want to take it to the native population, we might find a centre that might be closer. That is a suggestion.

Mr. McLean: We had discussed Kenora as one of the areas.

Mr. Callahan: I would think that or even further up.

Madam Chairman: The problem we were faced with was the time span of getting the committee there, but certainly I think it was something that we discussed when we were trying to think where we could go in the north and have a number of people who would be submitting to us.

Mr. Callahan: You might add it to a trip I missed, but I think the Ombudsman's committee took a trip to--where was it?

Mrs. Meslin: Big Trout Lake and Fort Severn.

Mr. Callahan: Big Trout Lake. That was not just a holiday; it was for the definitive reason of seeing that area. Not only to make it easily accessible to the native population, but also perhaps to demonstrate to them the real concern that we have about our native population here in Ontario, that might be a considered location for at least one day anyway.

Mrs. Meslin: I think the only problem you might face is that when we did the trip, we went to three or four separate reserves, which means the only people who see you are the people on a particular reserve. There are no accommodations, both in the sense of sleeping or for other Indian native groups coming into those places. What you try to find is a central location where they normally come. A lot of them come into Thunder Bay, because there are a lot of governmental agencies in Thunder Bay. A lot of them come into Kenora. So the distinction between Timmins or Kenora--

Mr. Callahan: You do not see a difficulty for them in getting there to present their briefs?

Mrs. Meslin: I do not see any difficulty in that they do a lot of travel.

Mr. Callahan: OK. That was my concern.

Mr. Sola: I was just going to move to accept your recommendation.

Madam Chairman: Thank you. Before we hear from Mr. Elliot, could we have a seconder for the motion? Mr. McLean. Thank you.

Mr. Elliot: I would like to add to the comments already made with respect to the logic of Thunder Bay as being a centre to which a wide variety of native people could come relatively conveniently. We are really looking at three areas of extended jurisdiction and we really should be going to centres where we also look at the extension of the other two areas of concern. Thunder Bay seems to be a logical place to do all three of the considerations, not just the child welfare aspect of the thing.

Madam Chairman: Mr. Sola moves, seconded by Mr. McLean, the adoption of the subcommittee report.

Motion agreed to.

Mr. Callahan: May I ask as well, do you have the permission of the third party to start the meeting without their attendance?

Madam Chairman: Yes, we do. Mr. Philip shall be joining us at about two o'clock and be admitted. Mr. Charlton is in another committee and could not get a substitution. That is for the record. Mr. Philip was one of the members of the subcommittee and he agreed totally with our report as it stands.

Mr. Callahan: I called it the third party too. I guess I should not have done that. They are the official opposition, are they not?

Madam Chairman: Next, we have some outstanding matters from the Ombudsman. These are outstanding matters from previous committee reports.

First, we will be hearing from the Ministry of the Environment and Mr. L. We have here Jim Jackson, who is the acting director of legal services for

the Ministry of the Environment; Eleanor Meslin, the executive director of the Ombudsman's office; and Mr. Zacks, general counsel of the Ombudsman's office. I would like to start with Mr. Bell, if I may.

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ANNUAL REPORT, OMBUDSMAN, 1986-87

Mr. Bell: Those of you who have your briefing material from the last hearings can, if you will, turn to tab 0 in that material. For those of you who do not have it but who have had material distributed this afternoon--has that been done?--it is under the heading Ministry of the Environment. I just want to give you a brief explanation of the background of this case and the relevance of the material.

As you know, in each annual report the Ombudsman takes inventory, both on his behalf and on the committee's behalf, of outstanding matters. There are two appendices in that report, creatively called A and B, in respect of which he outlines and itemizes things that have not yet been concluded. The committee takes that inventory and pursues it with the governmental organizations in question and that is what we are about this afternoon.

On the matter of the Ministry of the Environment, first, if you will turn to the material, the last two pages are copies of the relevant appendix included in the Ombudsman's last report. For record purposes, this matter was originally reported as a recommendation-denied case in the Ombudsman's 11th report, dealing with a decision of a former Minister of the Environment to accept an arbitration decision with respect to the particular complainant, who was a contractor or a subcontractor on a project performed for the Ministry of the Environment.

As you can see from the appendix, the committee, in its 12th report in its second recommendation, recommended that "the Minister of the Environment accept in principle that the crown may, in appropriate circumstances, pay a claimant interest due pursuant to a term of a contract with a contractor; and the Minister of the Environment consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim."

When the matter first appeared before the Ombudsman, the issue had distilled itself to one of awarding interest in appropriate circumstances on an amount due to a contractor pursuant to the process in place under that ministry; otherwise, the minister was obligated in appropriate circumstances to pay interest.

What your recommendation means and has been interpreted by the Ombudsman and the Ministry of the Environment to mean is that the question of interest, whether it is due and payable in this particular case, will be put to another board of arbitration or to another arbitrator chosen in the same way as the original was, which is an acceptable and appropriate way. Whereas that was your recommendation in the 12th report, and I believe the 12th report has been adopted by the House, and in any event the recommendation was accepted by the minister and the ministry, a couple of years have gone until today without any apparent progress to implement the recommendation.

Mrs. Meslin or Mr. Zacks, have I fairly stated the situation as of now?

Mr. Zacks: Yes.

Mr. Bell: With that, Mr. Jackson, I think the committee is interested in hearing from you an explanation on behalf of the ministry as to why it has taken so long.

Mr. Jackson: Subsequent to that report, an offer to arbitrate was made. The person whom the Ombudsman was dealing with did not accept the terms that the offer was made on. The committee subsequently made some recommendations with respect to those terms.

The matter was not dealt with by the ministry. That was my responsibility. I was expecting to receive a copy of a contract, and put the file aside and left it put aside. We obviously cannot wait for ever. I am prepared to write a letter, and I will send a copy of it to the Ombudsman's office within the week, setting out the terms and conditions for an arbitration that are consistent with the committee's last recommendations on this matter.

Mr. Bell: Specifically, what you are referring to are comments or recommendations made by the committee in its 15th report dealing with the process. Is that correct?

Mr. Jackson: That is correct.

Mr. Bell: In specific terms, what has to be done by the ministry to get the arbitration on?

Mr. Jackson: We have to make an offer of those terms to the other party. The other party has to accept them. We will provide a list of possible arbitrators, from which he can choose one. We will then proceed with the arbitration.

Mr. Bell: Are you prepared to have all of that done this week?

Mr. Jackson: The offer will be made this week. I do not know how quickly we will get a response. If we do get a response, we will provide a list of arbitrators and will be prepared, at the convenience of the other party and the convenience of the chosen arbitrator, to arbitrate promptly.

Mr. Bell: For the moment, I am only interested in that which is for the ministry to do. You may not have control over the speed of the response, but in terms of whatever you have to do, drafting, formalizing and submitting an offer for arbitration in the terms stipulated by the committee, can the committee have your assurance that that will be done this week?

Mr. Jackson: Yes, it will be done within the week.

Mr. Bell: All right. I take it also that the committee has your assurance that, to the extent it is within the power of the ministry, all steps will be taken to expedite this arbitration?

Mr. Jackson: Yes.

Mr. Bell: Members of the committee, I do not have any further questions.

Just by reference, at pages 3 and 4 of the 15th report, particularly at page 4, the committee did express concern over the length of time that had gone on. I think that is acknowledged by all sides.

There is one more thing. Would you, Mr. Jackson, on behalf of the committee, undertake to advise the committee, through the clerk, of the progress of the arbitration as and when events occur?

Mr. Jackson: Yes.

Mr. Bell: Like offer made, response received, arbitrator selected, dates of arbitration, arbitration completed and decision.

Mr. Jackson: Yes.

Mr. McLean: Just for clarification, the offer we are talking about is the offer of the terms that will be negotiable, that the arbitrator will be dealing with. Is that what we are talking about when we are talking about the offer?

Mr. Jackson: The offer of the terms under which the arbitration will be carried out. Yes.

Mr. McLean: You are aware of the terms that were laid out some time ago in Hansard?

Mr. Jackson: Yes.

Madam Chairman: For the record, would you like to state which Hansard, if you have that available, so that we have it clear?

Mr. McLean: I am just looking at the report that was taken out of Hansard. The date is not on the report I have. I believe it would be the fall of 1986.

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Mr. Bell: It may be September 23, 1986. That was a date the committee considered that question at that time. That was reported on in the 15th report, which is a December 1986 report.

Mr. McLean: That is all I have. I am just pleased to see that it is proceeding, that is all.

Mr. Callahan: I note in this regard that you are going to send out this letter to the other party and when you get a reply you will then send out a list of available arbitrators. Can that not be done together?

Mr. Jackson: If it were to be done together, it would probably take two or three weeks to get that step done, because we first have to check with the arbitrators to see the dates they are available and if they are available in a short period of time or a longer period of time. I expect the two processes can go on together in our office; that is, checking who is available in a short period of time, on the assumption that the offer will be accepted, so that when it is accepted or very shortly thereafter we would be able to provide the subcontractor with a list of candidates from whom he could select.

Mr. Callahan: I am just interested in seeing it speeded up.

Mr. Jackson: I think it would speed it up if we did both things in parallel, rather than waiting for the second part to be done before we do the first part.

Madam Chairman: You will be pleased that this is going to be acted on as expeditiously as possible. I am sure the Ombudsman's office is and, on behalf of the standing committee, I am glad to see you are pressing ahead with this. May I say, "as quickly as possible" can only be emphasized?

As the next person on our agenda, re the public service superannuation fund, Mr. O, is not expected to be here until two and Mr. Philip has specifically asked that he or some member from the opposition party be present, perhaps we can deal with other matters, Mrs. Meslin. Would you be prepared to do that and press ahead for as long as we can?

Mrs. Meslin: Surely.

Madam Chairman: Thank you.

Mr. Bell: Mrs. Meslin, can we deal with the Ministry of Housing matter, which is at tab T? Members, you should have only one piece of paper in that tab, and if it has the name of the complainant on it, our apologies. It should have been anonymized but was not.

In any event, without a lot of detail, Mrs. Meslin, can you just give the committee a brief thumbnail of what this is all about and what the current status is and whether that status is to the Ombudsman's satisfaction?

Mrs. Meslin: The basis of the report today is a recommendation made by this committee in 1980 that was not implemented. The recommendation was that the Ontario Housing Corp. recommend that the complainant's claim, as assessed by the OHC, be paid by the surety. This had to do with a building construction contractor's default on a housing project.

Mr. Bell: Just for the record, this case never came before the committee in any detail, did it? It was rather a recommendation that they said they would implement but in fact have not?

Mrs. Meslin: That is correct.

Mr. Bell: OK.

Mrs. Meslin: The OHC accepted our recommendation and made a request of the surety, which was refused. The reason it was refused, or so they had advised us, was that any money held by the surety had been exhausted by the time the recommendation was made, so that there were no funds in the surety.

What occurred after that is that it sat in abeyance, with nothing being done at that point. The Ombudsman brought it to the attention of the Ontario Housing Corp. recently once again. They have been looking through the situation and have come to the conclusion that there are some very valid concerns. They have asked us if we would just hold off while they review it and, hopefully, find some way to make some recommendation to us whereby they could solve the problem. They tell us now that within the next two to three weeks they will have a meeting with us, having reviewed all the data.

As far as we are concerned, it is not necessary for this committee to be involved in it at this time. We hope that we might be able to settle it.

Mr. Bell: It is like best scenario, worst scenario. Best scenario, you settle it or they implement the recommendation. What is the worst scenario? They come to you and say, "We won't or can't do it"?

Mrs. Meslin: Yes.

Mr. Bell: What are you going to do?

Mrs. Meslin: I would think we may well come back here with it.

Mr. Bell: As a recommendation-denied case?

Mrs. Meslin: Yes.

Mr. Bell: OK. How feasible is it to push them to a position before the end of this month, so that you can report it one way or another in your next report?

Mrs. Meslin: I will certainly try. We will certainly try to do that, and barring that, we would go to a special report, if we had to, so that we would bring it to this committee as quickly as we could, if we could not get it in the annual report.

Mr. Bell: Otherwise, you are waiting 18 months.

Mrs. Meslin: No, we would not do that.

Mr. Bell: OK. I do not have anything further on that.

Madam Chairman: Any questions from the committee? None. Could you just remind me again what year this all started? Did I hear 1980?

Mr. Bell: Yes.

Mrs. Meslin: Yes.

Mr. Zacks: Actually it all started back in the early 1970s.

Madam Chairman: I thought maybe I had heard the time incorrectly.

Mr. Zacks: Is this committee not already seized of the matter?

Mr. Bell: Pardon?

Mr. Zacks: Are you not already seized of it since it was reported in our annual report? Would it have to come back in any report fashion?

Mr. Bell: I think we want to know what happened in the interim. I think that is almost as important as the merits. I would like it in--easy for me to say--I would suggest that you do it in either the next annual report or a special report and include the chronology of events since the recommendation was initially accepted.

Madam Chairman: Thank you. Would you like to go on to the next one? Moving right along here today.

Mr. Bell: Mrs. Meslin, is the next one at tab Q, the Ministry of Consumer and Commercial Relations?

Mrs. Meslin: Yes.

Mr. Bell: Members, the material you have in this particular part

includes again the relevant portions of the appendix from the Ombudsman's last report and a couple of letters between me and a couple of ministers. There is a letter that should have been anonymized and it is not. It is referable to the complainant, a letter of September 8, 1987, from a representative of the ministry and, finally, a letter to me of December 29, which says in general terms that the appropriate steps are being taken but it is not appropriate to discuss it with the committee. What are we doing here then? Mrs. Meslin, what is the current status and is it now appropriate to discuss it?

Mrs. Meslin: No. My understanding of the reason that we were to be here was that the clerk of the committee had received a letter from the complainants asking that the committee look at the situation. We went back and spoke to a representative of the complainants and we clarified the areas he was unclear about so that he would understand where the ministry was in the process. He was satisfied after that meeting that the process had worked its way through. We felt it would be better if, for the record, we just reported that to the committee since it had been asked to look at it. He is satisfied at this point to wait for the process to work its way through.

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Mr. Bell: Are you able to predict when this recommendation will be finally implemented?

Mrs. Meslin: I do not know about finally, because as you know, there are quite a number of houses where these repairs have to be made. I am hopeful that in terms of the ministry setting its process in motion at that level, we should have something by the summer.

Mr. Bell: I think it might be useful. As you know, when the committee gets the annual report and looks at the appendices, there is a fairly automatic process of letters that go out to various ministries, etc., with these outstanding.

Could you perhaps give this, and maybe the previous one as well, some special attention which would indicate to the committee whether it is necessary to put this on the agenda and/or to meet with representatives of the ministry? If it is still in the implementation stage and you are satisfied, would you tell us that so we can shorten the agenda by that item?

Mrs. Meslin: Yes.

Mr. Bell: Members, for information, this recommendation had to do with a matter of the ministry compensating certain home owners in a particular development of houses built by a particular builder. It had to do with certain commitments made by the minister in that regard. I am generalizing and oversimplifying the recommendation that the committee ultimately accepted or formulated on its own when it went to the identification of certain people entitled to compensation and then to an implementation in that regard.

One of the reasons this has taken so long is that I think there is a certain amount of physical examination of houses etc. required, so it is not surprising that it is where it is.

Is there anything else you want to say about that, Mrs. Meslin?

Mrs. Meslin: No, that is it.

Mr. Bell: I do not have anything further.

Mr. Callahan: What are the dates of these houses? When do they date back to?

Mrs. Meslin: About 10 years now.

Mr. Callahan: The reason I ask that question is that I notice the recommendation of the committee refers to the home owners who were the original home owners.

Mrs. Meslin: That is right.

Mr. Callahan: It is, "1(a) The ministry reopen its file on the matter and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses which are owned by persons who originally filed a deficiency list."

I take it from this that our recommendation only covers those people who have not resold their houses to somebody else.

Mrs. Meslin: That is right.

Mr. Callahan: I wonder if that was the intent of the committee at the time. It would seem to me to be a bit unfair to allow 10 years to pass and people perhaps to wind up with a major structural deficiency and then not rectify their cases as well as everybody else's. The Housing and Urban Development Association of Canada, I recall, normally only refers to deficiencies that are listed on the initial report and I think they only apply to the owner.

I have not read the ministry side of this, but if this delay has been caused by the ministry, it would seem to me that any benefit should inure for not just the present owners but also any people who have taken title from them, particularly if there are structural defects.

Mr. Bell: Mr. Callahan, I can assist. The matter of the class of home owners who were entitled was specifically and, I think, quite substantially discussed. There were real identification problems with this case, one of which was to identify the particular deficiencies which were to be compensated. I can recall that one of the things which happened with resales and sales of resales was that a number of subsequent owners, for good and sufficient reason not necessarily related to these deficiencies, had undertaken renovation, expansion, remedial work on their homes, such as it was impossible to ascertain.

I know all concerned, and particularly the Ombudsman, were of the view that those persons who originally filed deficiency lists should be the ones in respect of which compensation was payable, to open the door; otherwise, I think it was considered by all to be impossible to monitor and to close off. Perhaps that can assist you. The deficiencies are 10 years old. The case is not, though. The case is a 1985 case.

Mrs. Meslin: Yes, it came to us later.

Mr. Bell: The initial sales were 10 years ago. The builder subsequently went out of business, did he not? Bankrupt, I guess.

Mrs. Meslin: There was a problem with the time, with the then minister making promises in the House which caused the problem in the first place.

Mr. Callahan: Just so I am clear on this, if one or more of these houses have changed hands, which I suppose has probably happened, is it the ministry's intent to compensate the present owner of the existing structure or to compensate the person who originally filed the deficiency list?

Mr. Philip: The original owner.

Mr. Callahan: In other words, the original owner may wind up with a windfall.

Mr. Philip: No.

Mr. Callahan: They may, Mr. Philip, if in fact he has sold the house, perhaps a buyer-beware idea. If a person buys the house and the defect is there, then if the payment is going to be made to the original owner and he has not taken any reduction in the price of the resale, he is going to wind up with a windfall.

Mr. Philip: I think the assumption, though, on the part of the ministry has been that the houses have been devalued as a result of the problems. Therefore, the person would purchase at a devalued rate.

Mr. Callahan: And sell it?

Mr. Bell: Yes, this is a notorious subdivision.

Mr. Philip: I suggest you not buy one.

Mr. McLean: It is probably in Brampton.

Mr. Callahan: Is that right?

Mr. Bell: No, it is not. It is closer.

Mr. Callahan: OK, as long as that assurance is there. I would hate to see the people who wind up with the house wind up with a house that has a major structural defect and the people who sold it get a windfall. It seems hardly--

Mr. Philip: Does the Real Estate and Business Brokers Act not state that an agent or vendor must disclose any major problem?

Mr. Callahan: No, as long as he does not deny it; as long as he is not asked and denies it, it is buyer beware.

Mr. Philip: I have spoken to a number of agents and they tell me they always disclose it if there is any major problem. Otherwise, they are open to a lawsuit afterwards. I am not talking about a squeaky furnace or something like that, but about a major defect. It is certainly the law that if urea formaldehyde foam is in, it has to be disclosed, but other major defects also have to be disclosed.

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Mr. Callahan: In fact, you sign a declaration that it has not got, nor has it ever had, urea formaldehyde foam. There is nothing in law, as I understand it, which says that because it is there--you look. I agree with you that probably in the majority of cases, reputable real estate agents would bring that to the attention of the buyer, but there is no law that requires them to do that, as long as they do not misstate the facts. It is buyer beware.

Mr. Elliot: I would like to further clarify this point because people have actually bought these homes. It is clearly a situation where the buyer has to beware. I assume that if these defects were substantial, the homes would have been devalued accordingly, so the person who should be receiving the recompense would be the original buyer, if it in fact applies any more.

I am not sure exactly on the reading of this, but I submit that if they sold the place, probably they would not be entitled to recompense at this point in time anyway. I have sold real estate. I have been a licensed agent, and in actual fact, you buy what is there. The law really does not cover you in any way, shape or form on any of it. If you do not have somebody go in and actually check through the thing thoroughly, like a contractor who knows what is going on, after you have signed on the dotted line you really have no recourse unless you can show somebody perpetrated fraud against you by hiding something from you. But the responsibility is on the buyer to make sure that does not happen. It is not on the seller in any way.

Mr. Bell: There is another reason that just came to me. Many of these home owners, the people on the original deficiency list, relying upon certain representations that were made by the minister and the ministry, effected these repairs themselves. It is a recompense situation. That is another reason why it was decided only the original home owners, the original repairers, if you will, were entitled to receive it. That way, the person has taken it twice and it would not be appropriate to give it to a subsequent buyer in his purchase.

Mr. Callahan: I do not want to belabour this point, but you refer to major structural defect. It could be that the roof struts are all--what is the word when they are out of line? Somebody help me out--warped, something you would never know, and you could sell the house and the poor soul who buys the house now winds up with a house with a roof that is probably going to last about half the length of time it should last. I would like to know what the major structural--

Mr. Philip: The committee had a list.

Mr. Callahan: Did it?

Mr. Bell: If you read on, it is also defined by inspection reports that exist. But what happened chronologically is that HUDAC, the minister and the group were darned close to a deal--some argue a deal was made--in respect of which inspection reports were prepared by experts retained by either HUDAC, the ministry or both. The thing then fell off the rails in terms of who was going to fund it. Fortunately, there had been an inspection report, another response to the 10-year concern, which is a valid concern.

These inspection reports are now five or six years old. So that crystalized, if you will, the identity of the defects and a class of the

defects. The committee had before it information as to the nature and the type of defects, and the language of that recommendation is deliberate because the reports, and the people who are privy to those reports, know what "major structural" and "substantial defects" mean in the context. Identity is not going to be a problem. The real problem is still the--

Mr. Callahan: Who gets the money.

Mr. Bell: That is right. It is getting hold of or contacting the persons who are entitled.

Mr. Callahan: I will leave it at that. I do not know what the background is but I would hate to see someone getting the money who has already got the money.

Mrs. Meslin: I do not think that is the problem because I think the home owners' association committed to give the ministry the names of those people. They already had a list and the ministry accepted the list it had been given of the people. They came to a decision over that. It is just that the ministry has now got a whole process for how this thing is going to be done, whether they are going to have the repairs done or pay the money or whatever. There is a whole procedure going on that has nothing to do with who will benefit.

Mr. Callahan: I will accept that, but I will not drive through that subdivision if you are wrong.

Madam Chairman: Is there any further discussion on this case? I see no one in need of discussion. Is there anything further, Mrs. Meslin?

Mrs. Meslin: Not on this.

Madam Chairman: The interested parties for the next case are coming today but they are not here yet. There is one other item for us to discuss and then I would suggest an adjournment until they arrive. The clerk could hand this around.

Mr. Bell: The Workers' Compensation Board?

Madam Chairman: Are we waiting on the WCB until 2:30 p.m. or can that be dealt with?

Mrs. Meslin: That could be dealt with. I do not think anyone is coming from WCB. I do not think there is any necessity.

Mr. Bell: How long do you think we will need for WCB?

Mrs. Meslin: Five minutes.

Madam Chairman: Seeing that we have the full committee but one here at this time, I am passing around a supplementary budget for the standing committee. Initially, when we did the budget, we had anticipated, if I remember correctly, about \$41,000 in expenditures until the end of the fiscal year, March 31, 1988. We have not sat for as many days as we thought we would.

However, we have an additional bill for legal fees. In the original budget, we estimated legal fees to be \$10,000. We have been able to zoom through the material a little more quickly and legal counsel is prepared to do

our report, and we have had a little more preparation time with the subcommunications committee meeting. With these extra two days and with some extra billing during the last time we sat, Mr. Bell has submitted an additional estimate of the amount he will require for his legal services until the end of the month. It is outlined before you in the supplementary budget, which is for 50 more hours at \$100 per hour. In fact, \$700 of this had already been expended before we met today to prepare the report of the committee during this month and in preparation of yesterday and today.

I would ask the committee to accept this. It probably will not affect our total budget. It is really a reallocation of money expended from the days we have not sat and some other expenditures we anticipated which we have not incurred.

Mr. Philip moves, seconded by Mr. Bossy, that the supplementary budget be accepted.

Mr. Callahan: When you originally went before the Board of Internal Economy for your budget, you had a figure listed for legal services.

Madam Chairman: That is correct.

Mr. Callahan: Do I understand you to say that there is no need to go back to the Board of Internal Economy because, out of moneys that were allocated to other items, this can be met, if it has to be met?

Madam Chairman: I gather it will still go back to the board because of the reallocation. I understand that we have not, even with this bill, exceeded our budget that was originally approved.

Mr. Callahan: I just wanted to be sure, when we were committing this to Mr. Bell, that it was not the members who were committing it to him, but it was the board.

1400

Mr. McLean: I would like to know if we could get an itemized statement. I think that in most cases I would like to find out where the bulk of the time is being spent and in what area. I am sure they have it all itemized in their office. I think it would be fair to the committee to find out what hours are being spent where and for what.

Mr. Bell: Mr. McLean, that has already been done. What happened is, you will recall the committee did not do a lot of work last year. A couple of things intervened, the election and other more pressing legislative matters. The consideration of the Ombudsman's last annual report was delayed until this winter. Instead of the budgeting really being done on an annual basis from the time you started your work, it was done on the fiscal period ending March 31. The estimate of the time to deal with all matters outstanding, i.e., hearings, reports, etc., was pegged in your last budget at \$10,000. That was obviously an underestimate. I have submitted, to the clerk and to the chairman, an itemized account which breaks down the hours as of the end of January.

Madam Chairman: That is correct.

Mr. Bell: What happened is that account, by time, exceeded by \$700 the \$10,000. This is an estimate. I doubt, very frankly, whether we will use up all of that \$5,000, but nevertheless, there is a cushion. At the end of

this month, I will submit a further itemized account showing where the time has been spent since the last account. That is the practice and that is available for any member of the committee to review.

Mr. McLean: I figured it was available and that is why I asked

Madam Chairman: We will certainly make that available to you, Mr. McLean, and to any other members who would like to review it.

Mr. Bell: I can just give you a highlight, if you want. The two areas of time that are the biggest blocks are, first, the time that is spent here with you. That was the two-week period we spent together in January, plus the preparation prior to that to get things organized and ready, and the preparation during.

Madam Chairman: We will certainly make that available to you, Mr. McLean. It is fairly itemized. The additional per year, previous to this year, for legal fees was approximately \$20,000 per year in the budget. Because we only had four months, we had anticipated Mr. Bell would do half as much, but in fact what we have done is almost our entire year's work in the four months and that has generated this additional bill.

Any committee members wanting an itemized listing, in addition to Mr. McLean, should certainly see me and I will be more than willing to provide them with that.

We have a motion before the table to accept the supplementary budget and submit it to the Board of Internal Economy. All those in favour? All those opposed?

Motion agreed to.

Madam Chairman: The next item on our agenda is the public service superannuation fund. Mr. O and Mr. Basil Cooke, secretary to the board, if you could come up to the table, we would appreciate it. This case is under tab N in the book. For those who do not have the book, the top letter is the letter dated February 25, 1987. Has everybody found that? We will just get everybody one before we commence.

In the meantime, Mr. Philip, I had indicated to the committee that, with your consent, we were able to start at one o'clock today with our other case.

Mr. Philip: I am sorry; I had another commitment.

Madam Chairman: I just wanted to make clear for the record that was acceptable, as long as we did not proceed with this one until your arrival.

Mr. Philip: Sure. I am pleased to see the subcommittee report was passed in my absence.

Mr. Bell: Again, some background is necessary before this material can be fully addressed.

The Ombudsman, in his 11th report, included a recommendation-denied matter wherein a recommendation was made to both the Ministry of Government Services and the Public Service Superannuation Board. It had to do with an individual, complainant O, who because of a change of job within the public service transferred his pension credits from the public service superannuation

fund to the Ontario municipal employees retirement system.

Before he did so, the Ombudsman determined, certain representations were made to him by the director of the pension funds branch. The Ombudsman further determined that, although advice was given to him, he was not informed at the time that, upon the transfer of his pension benefits from one to the other, he would lose certain contributions made to the former fund and he would also lose entitlement to a pension calculated on the average highest three years of earnings. In other words, in fact, there was a diminution in pension benefits by the switch. He was not informed of that and that is the crux of the Ombudsman's findings and the conclusion behind the recommendation which was that the complainant be paid a reasonable compensation for his loss by either the ministry or the Public Service Superannuation Board.

The committee, in its 12th report, on pages 20 and 21, agreed with the Ombudsman's conclusion that the director of the pension funds branch, having assumed responsibility for advising the complainant on the transfer of certain pension credits, failed to inform him of all of the adverse consequences. The committee, however, concluded that there did not appear to be any evidence that even if those consequences were disclosed by the director, it would have affected the complainant's decision to accept the position.

More important, the committee declined to then implement or accept the recommendation because there was no evidence before it as to the quantification of the loss or whether, in fact, a loss, in dollar terms, had occurred. The committee's words at the end of this portion of the 12th report: "To do so would be to support the payment of moneys to compensate for a loss which had not been established."

Subsequently, the Ombudsman pursued the matter further with the committee and came forward with what was offered as a quantification of the loss or at least a partial quantification. In any event, in the committee's 15th report, on page 16, after reporting what it did in the 12th, stated: "The Ombudsman pursued the matter and, at the committee's September meetings, requested that the committee reconsider its earlier decision. The committee agreed to reopen the case and receive evidence concerning the quantification of the complainant's loss. On hearing this evidence, the committee determined that the appropriate amount as compensation for the complainant was \$2,239.91 plus interest on a sum calculated annually at the prime rate existing at the time of the transfer, namely 6.5 per cent. The total amount with interest was \$4,981.92.

The committee, in that 15th report, recommended that the ministry and/or the Public Service Superannuation Board pay the complainant that amount. All of that is background to the material in the file. Again, you have the copy of the appendix in the Ombudsman's last annual report showing that the recommendation is still outstanding. Before I lose my voice altogether, Mrs. Meslin, could you pick it up from there, just to explain to the committee what has happened since and what the Ombudsman's position is?

1410

Mrs. Meslin: Since 1987, we have been communicating by letter with the then Deputy Minister of Government Services and with the Public Service Superannuation Board to try to determine what would happen in relation to the committee's recommendation, and, by letter dated January 23, 1987, the chairman of the Public Service Superannuation Board expressed her concern to us that neither the board nor the ministry had been allowed to make any

representations before this committee during its most recent consideration of the matter. She--the chairman, that is--also stated in her letter that the board had no authority to make an ex gratia payment in this matter.

By further letter in February 1987, we provided the chairman with the background information, explaining how the matter had arisen most recently at the committee. We included copies of the transcripts from the committee and advised her that we would be prepared to review the matter again at the committee should either the board or the ministry feel it necessary. She wrote to us after that, on February 19, to say:

"On behalf of the Public Service Superannuation Board, I maintained and continue to maintain firstly, that there was no act of malfeasance, misfeasance, or omission on the part of the director, and secondly, that a loss, if any, to Mr. O could only be determined at the time he retires and could only be based on numerous speculative assumptions. The committee, although in its more recent discussions appears to be under the impression that there was misinformation given to Mr. O, also saw the difficulty in determining what loss if any was suffered. In my reading of the transcript, the committee accepted the amount recommended by the Ombudsman just to get the matter out of the way, with no conviction that it was, indeed, the proper amount, or for that matter that any loss has been incurred by Mr. O.

"In any event, as I said in my earlier letter to you, the board has no authority to make this payment out of the public service superannuation fund."

That is where we are today.

Mr. Bell: Gail Morrison wrote to me last February. That is the February 25 letter, which really is a restatement of what we have just been talking about. Have you had any further communication with either the board or the ministry?

Mrs. Meslin: No, we have not.

Mr. Bell: I am correct, am I not? The committee's 15th report has not been debated in the House?

Madam Chairman: No. It has just been tabled.

Mr. Bell: Is there anything further you want to add, Mrs. Meslin, before we ask Mr. Cooke?

Mrs. Meslin: No. We are here for the committee's guidance.

Mr. Lupusella: In the letter dated February 19, 1987, from the Public Service Superannuation Board, there is a statement which says that if there is any loss, the claimant can recoup the loss at the time of retirement.

I cannot find the statement. OK, here it is. "...secondly, that a loss, if any, to Mr. O could only be determined at the time he retires." The committee has figures of the amount of money which, in theory, Mr. O is supposed to get as a result of this loss. How has this calculation been made when, in fact, the Public Service Superannuation Board maintains the position that the calculation can be made only at the time he retires? Would you like to describe that?

Mrs. Meslin: Do you want us to respond?

Mr. Lupusella: Yes.

Mrs. Meslin: We made a determination that the \$2,239.91--the original amount--represented contributions of the complainant's employer to the public service superannuation fund, which were left behind upon the transfer of the pension benefits.

Mr. Lupusella: Is there any particular regulation in any act or as a result of any statute that the claimant was supposed to be informed about the situation which took place? If there is no regulation whatsoever, why is the public service liable for this amount?

Mr. Zacks: I am not certain. There are some regulations that put some onus on some employers, I know, to explain pension funds. I am not sure if there was a statutory duty on the public service superannuation fund to do that at the time, in any event. My recollection of the case is that it was decided on legal principles analogous to negligence law that insufficient information was provided, there was a legal duty to provide the information and it was not done. Accordingly, as a result of relying on that misinformation or lack of information, the complainant suffered a loss, which we quantified previously to the committee.

Mr. Lupusella: Do you not think that some of the responsibility lies on Mr. O to know what is happening to his funds? Do you not think it is the same thing if I go to a bank, I deposit my money, I withdraw money from the bank and I lose interest? Should the bank inform me of that process and should the bank be liable if I do something like this?

Mr. Zacks: We are not trying to avoid the question. This was all discussed and reviewed previously. I have not reviewed the file in sufficient detail to answer the questions you are posing with specific facts about the case, but my recollection is that this person asked for information, or received information, because he was not aware of the implications of pension law and the statute and provisions of the pension fund.

He approached the fund with this purpose, to get this information, to rely on this information to govern himself. That is the basis upon which the Ombudsman dealt with the case. There was an obligation on the fund, having provided the information, to at least provide full information or correct information.

Mr. Lupusella: Thank you very much for the information. If I may, I would like to turn to you for further explanation.

Madam Chairman: Before you start your line of questioning, what I would like to do is get on the record Mr. Cooke's position.

Mr. Lupusella: Sorry, OK.

Madam Chairman: Then if you want to continue, and Mr. Philip is after that, is that acceptable?

Mr. Lupusella: Yes.

Madam Chairman: It is so that we do not jump into questions without knowing what the position is. Mr. Cooke, we would appreciate it if you could enter into the record your position on this matter so that we will have an idea of where the Public Service Superannuation Board is coming from.

1420

Mr. Cooke: I am the secretary of the Public Service Superannuation Board and my chairman asked me to extend her apologies. She is also chairman of the Commercial Registration Appeal Tribunal. There is a hearing on today, so she is not able to be here. The board continues to maintain that there was no error at all on the part of my predecessor, Mr. John Macdonald.

I am not quite sure how far you want to get into this, because the committee had already decided the opposite. If I could just take the committee's time for a few moments and very briefly run over the situation.

Mr. Callahan: Excuse me. Can I have a point of order before he goes on?

Madam Chairman: Yes, Mr. Callahan.

Mr. Callahan: I just want to find out something. Does this not all become rather academic in view of the fact that there is no authority to pay out the moneys anyway?

Mr. Philip: There is a claim of no authority. That is precisely the point of order I was going to make. I do not think that our role as a committee is to rehear something that a previous committee has already decided on. Surely the only matter before us is that the committee did recommend certain actions be taken, and certain actions are not being taken. Our questions should be directed solely toward whether the actions that we asked are possible and if not, why not. And if there other ways in which we can achieve the same objective that the committee asked for by recommending something either analogous, or different, to come to grips with that. If we start rehearing every case where a ministry says, "I am sorry; I do not want to pay," then we are out-guessing or second guessing a previous committee that spent a lot of time on this.

Madam Chairman: I agree with the point of order.

Mr. Lupusella: I understand the general approach of the point, but certain material has been submitted before this committee. If the committee has to use this approach, then we do not need any material before us. It is as simple as that. It does not make any sense for me to participate in any discussion which I was not part of in a precedent hearing. Now that there is a new committee, and the case is before the new committee with material which is before us, based on the point which has been raised by Mr. Philip, it is preventing me from raising any question on the case. How can I judge it?

Mr. Philip: The case is not before the committee, with respect, Mr. Lupusella. What is before the committee is--

Mr. Lupusella: Lupusella.

Mr. Philip: Lupusella. I am sorry if I have affected your sensitivities.

Mr. Lupusella: Yes.

Mr. Philip: I did not know you had any.

Mr. Lupusella: You never had it.

Mr. Callahan: I think--

Madam Chairman: Mr. Callahan, no further comment on this matter would be appreciated.

Mr. Philip: The matter that is before the committee is not the case. The matter that is before the committee is that the payment that we recommended, or that the previous committee recommended, is not being followed for certain reasons. It is our responsibility only to look into those reasons and to deal with that matter. Otherwise all of the material would have been retabled and we would have had a complete rehearing of the case which, I submit, would be completely out of order.

Madam Chairman: I agree with the point of order and I would like to make a decision. We are not rehearing this case. We are deciding solely on the issue of whether the issue put forward before us by the Public-Service Superannuation Board as a reason for not paying out, is a valid reason, and what we should do with that. I do not think it is our position to rehear the merits of this case, but solely the reasons why it has not been implemented and to deal with the recommendations of the previous committee.

Mr. Callahan, do you have something further on this?

Mr. Callahan: Just information on that. I gather then that what you are saying is we are not deciding whether--we are not going that next step and saying it can be paid out. Really what we are doing is we are deciding on something that is hypothetical, because until the legislation that is recommended is passed, and thus is passed retroactively to assist this person, it does not solve anything.

If I could address Mr. Philip's comment. As I read it, paragraph three of the February 25 letter says that neither the board nor the ministry had been allowed to give their side. I would think that is not a rehearing at all. What that is called is "natural justice."

Mr. Philip: That isn't the case.

Mr. Callahan: I do not know. I am relying on the material before me.

Mr. Philip: The board appeared at the original hearing, a decision was made in the matter against the Ombudsman. Both sides were here at that initial hearing. It was brought back to the committee only as a matter similar to the way in which it is being brought back now.

Mr. McLean: I would like to hear from this gentleman why the superannuation board has not acted on the recommendation.

Madam Chairman: Thank you. I would like to hear from him as well. Mr. Cooke, could you continue.

Mr. Cooke: We administer the Public Service Superannuation Act, which is an act of the Legislature, and there is no authority in that act for us to make a payment of this nature. The act clearly lays down the terms and conditions under which we can make payments out of the public service superannuation fund, and a payment of this nature is not provided for in the legislation.

Madam Chairman: Thank you. Mr. Bell.

Mr. Bell: The committee's recommendation for the money payment is in its 15th report, which although tabled in the House, has not been debated. I think you are familiar with the history of the committee's report as tabled and adopted by the Legislature. What would the board's position be if this recommendation is adopted by the Legislature?

Mr. Cooke: We still have to administer the legislation, which as I explained earlier makes clear directions under the circumstances in which we can make payments out of the public service superannuation fund. We can make refunds when people leave. We pay pensions when they retire. There is no provision for any other payments. It is not that we wish to cross the committee; there is just no legislative authority in the act.

Mr. Bell: Other government boards that administer funds--I will use the analogy of the Workers' Compensation Board--have as part of their funds something called a discretionary fund, which is used for discretionary payments. Is there a comparable animal?

Mr. Cooke: No, sir.

Mr. Bell: These questions may sound naïve, and they probably are to one who is familiar. Are you saying that every cent, either contributed by the employee or by the employer, must be accounted for in terms of pension payout? You are nodding your head yes?

Mr. Cooke: Yes, I am.

Mr. Bell: What if this case were under the category "legal obligation to pay"? Does the board have an ability to make such a payment?

Mr. Cooke: Only if it is provided for in the act.

Mr. Bell: Let me ask you in the hypothetical. If the board were sued for the payment of certain moneys and a court determined that the board was obliged to make that payment, where would that money come from?

Mr. Cooke: I presume in that case it would come from the fund, because the court would have found the board not to be administering the act correctly.

Mr. Bell: But where do you go to the act to make that payment?

Mr. Cooke: You are talking a hypothetical case.

Mr. Bell: I know, but in my hypothetical case where do you go in the act to make that payment?

Mr. Cooke: There is no slush fund in the act. You either get a refund of contributions when you leave or you get a pension when you retire.

Mr. Bell: No. But in my case, what part of the act do you identify to make the payment that the court says to pay?

Mr. Cooke: I am sorry; I do not understand the question.

Mr. Bell: All right. There is a judgement for the payment of \$5,000.

Mr. Cooke: For what?

Mr. Bell: Pension benefits.

Mr. Cooke: If it is pension then--for instance, where it could crop up is where sometimes the board has to decide between a common law spouse and a legal spouse. We make the payment in accordance with the evidence before the board. If the court finds we have made payment to the wrong person, then it is a payment which is payable under the act, and the board would have to authorize payment.

Mr. Bell: What if the court said, "The board is liable to this individual because of certain representations made to him."

Mr. Cooke: There is no provision in the act to make payments of that nature.

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Mr. Bell: So even though the court had determined that the board was liable for that payment, the board would not make a payment?

Mr. Cooke: You are talking about a very hypothetical question--

Mr. Bell: I know.

Mr. Cooke: --and it is very difficult to answer it. The fund is there to pay pensions and to pay refunds for people when they leave.

Mr. Bell: OK.

Mr. Cooke: Which is what it did in Mr. O's case.

Mr. Zacks: If there were such a situation as the second hypothetical, my recollection is that under the Financial Administration Act there is some provision for payment out of the consolidated revenue fund for those types of liabilities.

Mr. Bell: Could Mr. Cooke speak to that? Does he have any access to the consolidated revenue fund?

Mr. Cooke: We did have a legal opinion on this matter in 1983 from the director of legal services in the Ministry of Government Services. In the final paragraph of his memorandum, he said:

"The select committee on the Ombudsman has for some years past recommended in its report that the Financial Administration Act be amended to permit payments to be made out of the consolidated revenue fund where a governmental organization agrees to implement a recommendation of the Ombudsman."

No such amendment has yet been made. That was in 1983, so whether anything has changed since then, I do not know.

Mr. Bell: Are we not confusing the double-dipping case, though? That recommendation arose out of an issue of whether a retiree could come back and work for the public service and double-dip in respect of his pension. It really does not relate to the circumstances of this case. If I recall that opinion, that was given in respect of that matter.

Mr. Cooke: No. This opinion is in relation to the case that we are now discussing, Mr. O.

Mr. Philip: Have you obtained a legal opinion on the recommendation of the 15th report in 1986, or was the only legal opinion you have received in 1983?

Mr. Cooke: No. We also had one in 1984.

Mr. Philip: What does the one in 1984 read as?

Mr. Cooke: It is a six-page one that supports the board's contention that the board did not err.

Mr. Philip: But that was on the double-dipping issue again, was it not? What issue was that on?

Mr. Cooke: Mr. O, the case before you.

Mr. Philip: Mr. Zacks, have you examined that legal opinion?

Mr. Zacks: No. I have never seen it.

Mr. Philip: It was never presented to the Ombudsman.

Mr. Zacks: I am not aware of whether it was or it was not. There is reference to previous cases that the committee has considered where a recommendation was made to amend the Financial Administration Act or the Ombudsman Act. I think what has happened is legal counsel for the ministry has referred to those much earlier decisions and relied on those decisions to bolster the case that is currently before you. So there is some confusion between different cases that we are talking about. It is not quite clear.

Mr. Philip: Mr. Cooke, can you tell us whether or not any legal opinion was presented to the Ombudsman directly related to the recommendation of the 15th report?

Mr. Cooke: To my knowledge, no.

Mr. Philip: Since your argument is one that you do not have any authority to make such a payment--

Mr. Cooke: That is one of the arguments.

Mr. Philip: --why would you not present a legal opinion then to the Ombudsman? Surely that would have helped to deal with the issue.

Mr. Cooke: I believe the chairman used this opinion when discussing the matter before the committee. I am not quite sure, but I think so.

Mr. Philip: Would you read me the section of your act again, because I do not have it in front of me, the exclusivity clause or whatever you want to call it, that says you do not have the right to pay what the Ombudsman's committee asked for?

Mr. Cooke: There is nothing in the act that says you cannot pay it. The act merely gives the authority to make payments, and a payment of this nature is not one of those so approved. It states the conditions under which

one can pay a pension and the calculation, conditions under which one gets a refund, the death benefit, the survivor benefit.

Mr. Philip: The committee's recommendation was fairly clear. It says "that the Ministry of Government Services and/or the Public Service Superannuation Board pay the complainant the sum of"--an amount--"plus interest, and that the payment is made as compensation for loss of pension benefits," etc. Surely what they are asking for is a pension payment. How are you excluded?

Mr. Cooke: Because he is not a member of our plan. We cannot make pension payments to someone who is not a member of the plan. We have in fact done some calculations since the last meeting which show that Mr. O is in fact not losing pension as a result of his move to the Ontario municipal employees retirement system.

Mr. Philip: Why would you not have made that at the time you were before the committee and had an opportunity to contradict the arguments of the Ombudsman?

Mr. Cooke: We did not have it at that time. It was in conjunction with this legal opinion we had in 1984 that gave us Mr. O's salary with OMERS; we did some projections of pension based on those figures.

Mr. Philip: It is not the policy of this committee to allow new evidence after decisions have been made. You had your opportunity at committee, so to speak, and you did not present that evidence. Therefore, I do not think it can be taken into account.

Madam Chairman: Is that a supplementary you have, Mr. Callahan? You are on the list.

Mr. Callahan: I think it should be clarified, Mr. Philip. What this gentleman is saying, as I understand, is that there is no legislation--if we were to pay it out, we would actually be doing something that was illegal. I do not think that is introducing new evidence. What that is doing is telling this committee exactly what the reason--

Mr. Philip: No. That is not what I said was new evidence, though.

Mr. Callahan: What are you talking about? The legal opinion?

Mr. Philip: What I said was new evidence was the statement after that, in which he said he recalculated and in fact calculated--

Mr. Callahan: All right.

Mr. Philip: --and that is new evidence.

Mr. Callahan: All right. I thought you were referring to the earlier statement.

Mr. Philip: Should we, because it lists what you can pay--where is the provision in the act that says this is all you can pay? I do not see any exclusion of any other payments in that.

Mr. Cooke: This is a pension plan for contributing members and it is only contributing members who can draw benefits from it. That is what the

legislation says.

Mr. Philip: But he was a member--when?

Mr. Cooke: In 1966.

Mr. Philip: So he is an ex-member of the plan.

Mr. Cooke: Yes.

Mr. Philip: I think you are trying to use a technicality to get away from doing what the committee of the Legislature says. I wish your chairman were here, because I would certainly tell her in no uncertain language that her letter of February 19 is offensive, that members of the committee do not simply make decisions--what are her words?--"just to get the matter out of the way." This committee sits long hours and we debate. She was not involved in the in camera meeting in which we dealt with this at some length. I find her letter to be quite offensive, and I think she owes the committee an apology.

Madam Chairman: Thank you, Mr. Philip. Mr. Callahan, and then I have Mr. Elliot.

Mr. Lupusella: You are not speaking on behalf of the committee at large.

Mr. Philip: I think I am speaking of all thinking members on the committee, Mr. Lupusella. Maybe I am not talking about you.

Mr. Lupusella: I did not feel offended by the letter.

Mr. Callahan: Can I get a word in, please?

Madam Chairman: I am going to use my gavel. Mr. Callahan, you are listed for a question.

Mr. Callahan: OK.

Madam Chairman: Mr. Lupusella has made his point that perhaps he, as a committee member, does not support Mr. Philip's contention.

Mr. Philip: He was not on the committee which made the decision or the committee that is being attacked by the letter.

Madam Chairman: Mr. Philip was on the committee at the time. He has noted his displeasure with the comments. I hope Mr. Cooke has taken that into mind right now and will pass along that message on behalf of Mr. Philip, as a member of the committee at the time.

Mr. Callahan, do you have any questions?

Mr. Callahan: No. I think it has really been explained, except that I would ask Mr. Bell perhaps to confirm that if an act does not specifically give authority to pay out but only under certain circumstances, what does that do in terms of the authority of the paying body? Can they pay on things that are not within the framework of the act?

Mr. Bell: The obvious answer to that, in a rule of statutory interpretation, is that a statutory body can only do what the statute provides. However, that begs the question of what the act does provide. I hope somebody will pursue the issue of the consolidated revenue fund.

What we have heard today is not new. Many ministries or governmental organizations come before this committee to say, "We lack the statutory authority to make a payment" or "We have to identify a legal obligation." I for one do not fully understand how that consolidated revenue fund works in terms of access, but I would be interested in somebody pursuing whether this board has in the past accessed that fund, and if so for what reasons, and then if that has happened, maybe an examination of whether this comes within the circumstances of past procedure.

I do not think it is an answer to say it does not come within the specific listings of the legislation. I think you have to look at what general authorities those listings provide. We have sent for a copy of the legislation to see whether there is anything that can help us in there.

Mr. Callahan: Just one other question. Maybe I am mistaken, I read most of this other material on other items very quickly, but it seems to me that in one of the letters on one of the cases, there was a statement to the effect, "We're going to pay it, but this is not to be considered a precedent for future payments." Where did that money come from?

Mr. Bell: Maybe Mrs. Meslin should speak to this, because the cases where it works are the cases that you never hear about, but we are told year to year that the Ombudsman makes numerous recommendations for money payments and that those recommendations are accepted by the ministry or the governmental organization in question.

My general understanding is those funds are requisitioned, either from a general budget item or from the consolidated revenue fund. I guess, thinking out loud, if it is good enough for a ministry, why is it not good enough for this board?

Mr. Callahan: I was just going to add, I wonder if the difference here is not this: These are pension funds, which are really trust funds for all employees. Just as an analogy, if you extract money out of a lawyer's trust fund, if you wanted to be generous and make a payment out of a lawyer's trust fund, you would in fact be depleting the trust funds for other clients. I thought maybe there is a distinction there.

Mr. Bell: That is a very good point. Why I raise the Workers' Compensation Board, because that is a trust fund as well, is that the Workers' Compensation Board has a discretionary fund. I forget what they call it, it has a wonderful name.

Mr. Zacks: Second injury enhancement fund.

Mr. Bell: Second injury enhancement fund, and those are the moneys that fund all the committee recommendations. It may not be a true analogy, but--

Mr. Elliot: I have two or three questions to ask. The first one I would like to ask of the representative from the superannuation fund. Has your body done anything about contacting the Ministry of Government Services with respect to finding a possible route for payment there?

Mr. Cooke: Not to my knowledge.

Mr. Elliot: It seems to me that, since you do represent the people who are going to be superannuated, in the best interests of your clients, getting payment for a decision that has been duly made by this committee should be one of your priorities.

Because you have not talked with the Ministry of Government Services, which I expect is the route to the consolidated revenue fund, what you are doing here is saying, "By statute, we can't do anything at all, and consequently the incentive has to come from some other agency of the government in order to do this."

Has your board ever done anything like that with respect to a judgement like this one from this committee?

Mr. Cooke: We have never been in this position before.

Mr. Elliot: Having asked that of the superannuation fund, with respect to the Ombudsman, has the other route been pursued by your group?

Mr. Zacks: The other route being which?

Mr. Elliot: Going to the ministry involved that is mentioned in the recommendation or the letter here.

Mr. Zacks: I do not believe it has. I think it was left in the hands of the committee when it forwarded the recommendation. I am assuming it was forwarded to both the ministry and the fund, but I am not aware of whether or not it has been. It is clear that the recommendation is to both.

Mr. Elliot: Has the same kind of directive gone to the Ministry of Government Services as has gone to the superannuation fund?

Mrs. Meslin: In your committee's recommendation, which is on page 17 of the 15th report, it addresses that recommendation to both the Ministry of Government Services and/or the Public Service Superannuation Board. As such, both bodies would have been made aware of this by the committee.

Mr. Elliot: It seems to me the Ministry of Government Services should have representation at this hearing, because I think the judgement has been made by the committee in the report, been stated, the individual involved here has in excess of \$4,000 coming to him and either one of these agencies or ministries should look after it or they should intend and make sure that the needs of this person are satisfied.

Mr. Philip: I think Mr. Elliot is making a good point. Mr. Cooke, to your knowledge, did the Public Service Superannuation Board at any time refer this to the Ministry of Government Services to see whether it could pay it out of its revenue funds?

Mr. Cooke: I do not think so, sir.

Mr. Philip: Mrs. Meslin, to your knowledge, has the Ministry of Government Services responded directly as to the possibility of paying it out of its funds?

Mrs. Meslin: No, they have not.

Mr. Philip: Since you have received correspondence only from the Public Service Superannuation Board, have you written to Government Services and asked it for a response, since the committee did say and/or?

Mrs. Meslin: My understanding is once the committee has made its recommendations, the clerk of the committee sends those recommendations to both agencies and follows them up.

Mr. Philip: To the clerk of the committee or to the chairman then, has the Ministry of Government Services responded in any way, either to the chairman or the clerk on this matter? I believe Mr. Bell has the answer to that question.

Mr. Bell: It is in the material.

Mr. Philip: Not in my material.

Mr. Bell: The then acting minister, Sean Conway, wrote me in August of last year and said no action was required by the ministry.

Mr. Callahan: With respect, you were referring, I think, to the recommendations of the committee as to the amendments to the legislation that should be made.

Mr. Bell: Yes.

Mr. Philip: The letter from Conway is talking about the report of the Ombudsman, not the report of the committee. It is the committee's report.

Mr. Bell: What is in the Ombudsman's material deals with both the Ombudsman's recommendation and the committee's. But Mr. Callahan is probably correct. When you read that appendix in the Ombudsman's report, the thrust of it is on the amendment and not on the substantive payment issue. The appendix, I think, is a little misleading. In fairness to the minister, he has a specific question of pay-up. You are holding something else.

Mrs. Meslin: Yes. I am holding up a letter we wrote to you, the letter of February 25. When we go through the litany, we do indicate, in number one on page 1, on the same date the letter was sent to Mr. Raymond, Deputy Minister of Government Services. In a letter of January 9, Mr. Raymond advised us that he referred the matter to the Public Service Superannuation Board. Obviously, he and his ministry have been aware of it.

Mr. Philip: And simply passed it on.

Mrs. Meslin: I gather so from this.

Madam Chairman: Do you have a supplementary on this part, Mr. Callahan, the amended point?

Mr. Callahan: That was one of the points I was going to make, but it seems as though the point we are perhaps at--and not having been here on the original hearing of this entire incident, I can only conclude from the appendix, or the recommendation of the committee that was made, that at that time the committee determined it did not have legislative authority to pay out the money either through the superannuation fund or any other source. That was the reason for the recommendation being made for the amendments to the act.

Mr. Bell: No. What is unfortunate about that appendix is that there is a lumping together of a longstanding recommendation of this committee going back to the 1976 report of the Ombudsman, which for the first time raised the issue of ex gratia payments. The issue of whether a ministry, etc., could make an ex gratia payment is behind that recommendation for the amendment to, probably, the Ombudsman Act, giving a minister or a head of an agency the discretion up to \$1,000.

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Mr. Callahan: Or the Lieutenant Governor over \$1,000.

Mr. Bell: Yes. That dealt with the issue of ex gratia, and it got around the situation where a ministry would say, "We can't identify a legal obligation to pay, but we want to pay this person," something like what is being argued in the Supreme Court of Canada today.

Mr. Callahan: The Nelles case.

Mr. Bell: The Nelles issue, as to legal costs.

Mr. Callahan: Is that the legal costs that are being argued?

Mr. Bell: No, but the same case.

Mr. Callahan: OK, \$800,000 is a lot of legal costs, but I guess.

Mr. Bell: Well, if your lawyer is John Sopinka.

Mr. Callahan: John who?

Mr. Bell: John Sopinka.

The issue of that act, I think, has been looked upon by the ministry or the board as an answer. We do not have the legal authority, and you obviously recognize that legal authorities are required; hence that need for amendment.

Before this committee decides or concludes want of or presence of legal authority in the circumstances, I think it is necessary to pursue how payments are made in other circumstances with this board and, in fairness, the ministry. One of the parties not here today, which I believe should be here, is the ministry. One of the things I am going to say at the end of this--

Mr. Callahan: Which ministry?

Mr. Bell: In fairness, initially, the Ministry of Government Services. My understanding about that amendment to the Ombudsman Act is that it is going to be included in the package of amendments which I understand will be tabled in the House next session. You are nodding your head yes?

Mrs. Meslin: That is our understanding.

Mr. Bell: That is the hope.

Mrs. Meslin: The hope; that is right.

Mr. Bell: Whenever the bill amending the Ombudsman Act is tabled--

Mrs. Meslin: It is included.

Mr. Bell: --that \$1,000 ex gratia section will be there.

Mr. Callahan: OK. The only other question I have is that in reading the amendment and the subsequent history of it, the amendment was sent by Mr. Bell to the clerk and the clerk sent it on to the then acting Minister of Government Services, and he obviously--I think it is a fair reading of the letter--took it to mean that the recommendations were being made for amendments.

I also notice that over to the left where it says, "Ministry of Government Services," under that, "that the ministry pay the complainant the sum of X dollars for his losses..." How did that get on to the superannuation people?

Mr. Bell: I do not know.

Mr. Callahan: Why would they have responded to it if, as Mr. Philip says, they were present here and made submissions at the original hearing? If that was the case, why was the finding not made that the superannuation fund, or whatever your title is, pay the sum rather than the Ministry of Government of Services, which was here?

Mr. Bell: The Ombudsman's initial recommendation was either/or. The committee tracked that language in its recommendation and said either/or the ministry or the board pay the amount. When the committee dealt with the merits of this case--

Mr. Callahan: Somebody was missing.

Mr. Bell: Well, no, because it was agreed between the ministry and the board--Mr. Cooke can correct me if I am wrong--that the board would appear before the committee to deal with the issue. The ministry was given opportunity, in fact, was asked to, and they worked it out among themselves.

Mr. Callahan: I accept what he says, that contrary to what the letter tells us, the Public Service Superannuation Board was here and the order was made against the Ministry of Government Services, which was not here. I wanted some clarification on that. Somebody was missing or there was an agreement, as you say.

Mr. Bell: To be fair to the record, when the committee first considered the merits of this case, it decided that it would not support the recommendation because the loss was not quantified. That is the reference in the 12th report.

The Ombudsman pursued the matter subsequently before the committee with a quantification, and the committee in September 1986 quantified the matter. At that meeting, neither the board nor the ministry was present, but they were informed of that decision afterwards. That is why, if you look at the chairman's letter of February 19, I think, in fairness, the chairman of the board took issue with the fact that there was a quantification and the board was not before the committee.

Mr. Callahan: So that is what she means by that.

Mr. Bell: The Ombudsman said: "All right, but if that is the case,

we have no objection to raising the matter again with the committee. Let's go before the committee again on the quantification issue."

Mr. Cooke, again I invite you to correct me if I am not stating it fairly. The chairman declined that invitation. I think her very succinct first paragraph in her February 19 letter probably says it all, "The committee has had enough of the O matter and I am not sure that it would serve any useful purpose to reargue the case again."

So the invitation extended by the Ombudsman to address the quantification issue before the committee was declined and that is why we are here.

Mr. Callahan: Just finally, if I may--

Madam Chairman: Mr. Callahan, you know that you started on a supplementary to Mr. Elliot's questioning and I do think you have begged the patience of the other committee members at this point.

Mr. Callahan: I have. I forgot it was a supplementary.

Mr. Elliot: I really think, because of the stance of the Public Service Superannuation Fund representative and because of the attendant material that we have here, there has to be an arrangement worked out for payment. The decision has been made that payment should be made.

In reading the appropriate minister's letter, Sean Conway's letter, more carefully, I realize for the first time that he referred this to the Attorney General (Mr. Scott), I would submit probably to clarify whether you had the legal responsibility for payment or not, and subject to that judgement, payment should have been made.

I think this committee really should get some sort of a commitment or obligation from the Public Service Superannuation Fund representative, Mr. Cooke, today to perhaps pursue that end, and we should follow it up from our end too, so that the payment is received by the individual concerned as quickly as possible.

Mr. Cooke: I have never seen the letter from Mr. Conway to the committee and did not know that it had been referred to the Attorney General, but certainly we will follow up on that action too.

I think perhaps for Mr. Callahan we could explain that the Ministry of Government Services is involved because the chairman of the Public Service Superannuation Board at that time reported to the Minister of Government Services. He was the responsible minister. It has subsequently been changed in legislation and it is the Chairman of Management Board who is now the responsible minister.

Mr. Philip: Just following up on where Mr. Elliot was going earlier, Mrs. Meslin, would it be acceptable to you, or do you think it would be a good idea if we called before us the Ministry of Government Services or Management Board, whichever now is the relevant ministry, to see whether or not it would be possible for a payment to be made under the "either/or" and made a decision at that time? In other words, we stand this down until we have before us Government Services or Management Board, with the responsibility changing, as Mr. Cooke seems to indicate, or perhaps representatives of both, and ask them whether payment could be made under those ministries rather than under the

Public Service Superannuation Board in the event that Mr. Cooke's new legal opinion says that he cannot pay it.

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Mrs. Meslin: We are in the committee's hands. We certainly would have no argument about that.

Mr. Philip: That would also allow us the possibility of an amendment coming in at that time, which might make the whole thing academic. I would suggest that the matter be stood down and the Ministry of Government Services be contacted.

Mr. McLean: I do not see any point in meeting with the people Mr. Philip is talking about until the legislation is changed. It appears to me that there is no legislation that allows the payment to be made. The 12th report was turned down by the committee. The second report was approved by the committee. He indicates to us that there is no place that he can pay it. He has no authorization. What we have to do is have legislation in the Legislature to amend it. There is no point in meeting until that is done.

Mr. Lupusella: On the same line, I agree with the premise which you made. The Public Service Superannuation Board does not have the legal authority to make payments. Just for the benefit of the members, I would like to quote a statement which was made to the Ombudsman by the Honourable Roy McMurtry, who was Attorney General of Ontario. He expressed his opinion in writing that "a recommendation of the Ombudsman which is adopted by the select committee and agreed to by a resolution of the Legislative Assembly requires to be implemented by an act of the Legislature in order to be legally effective and binding." It is as simple as that. I do not think that we have the legal authority to force a board to make a payment when there is no legal authority to make such a payment.

Madam Chairman: Thank you. I acknowledge that you have read that into the record. I am sure there are other people who have a different view, but the chair does accept it.

Mr. Bossy: Just a short comment. There is no legal way at present. Unless the legislation is changed, I cannot see how we, as a committee, can recommend what is before us, unless we recommend the changing of the act, which, really, we already did indirectly. I have some difficulty with changing the act, especially the ex gratia payments, because it leaves it open.

The legislation is quite clear for them to interpret as to how they must exercise their duties to extend it. But if you go to an ex gratia payment, it leaves it to a minister. It could be, "For legal purposes you pay this; for political purposes you can kick in extra," and that is determined by a minister. I am a little bit uncomfortable with ex gratia, because that could become an area where it could be funded only for political reasons. That is why it disturbs me a little bit. We should look at that very closely.

Mr. Philip: It is not clear that the Ministry of Government Services cannot pay it out of general revenue. That is the reason I have suggested that the Ministry of Government Services be called before us. They do not have anything in their statute, which they have quoted back to us, that suggests they cannot. Ministers on a regular basis allocate certain funds for whatever purpose they deem necessary. If necessary, they can go to the Lieutenant Governor, which means the cabinet, for larger amounts.

I am not convinced that even the Public Service Superannuation Board has obtained a recent legal opinion on that. They admit that they have not, but at the very least, we can call before us Government Services to find out whether or not, in the deputy minister's view, a payment can be made. I submit that it is done on a regular basis by different ministries.

Mr. Bell: Mr. Cooke, when was the act amended?

Mr. Cooke: February 1, 1985, was the latest amendment.

Mr. Bell: They were the relatively extensive amendments. Under the current act, is the minister still responsible for the administration of the act?

Mr. Cooke: Yes, that did not change.

Mr. Bell: Does that include the making of payments out of the fund?

Mr. Cooke: The board reports to the minister and it is the board that administers the act on behalf of the ministry.

Mr. Bell: Unfortunately, I have a copy of the Revised Statutes of Ontario 1980.

Mr. Cooke: That was not changed.

Mr. Bell: All right. Section 2 says, "The minister is responsible for the administration of this act." That is still the case. "The administration of this act includes the authorization of the making of payments out."

Mr. Cooke: Of course.

Mr. Bell: Of course?

Mr. Cooke: Yes.

Mr. Bell: You would agree with me then that before the committee winds up its business and makes its final decision, it should really hear from the minister about whether the minister has the authority to make a payment out.

Mr. Cooke: Only in accordance with the terms of the act. That is up to the minister to say.

Mr. Bell: That is right. Is section 4, as it is in the Revised Statutes of Ontario, 1980, the same as in the current, which is the function of the board?

Mr. Cooke: Yes.

Mr. Bell: That reads, "It is the function of the board to make recommendations to the minister with respect to matters under this act."

Mr. Cooke: Correct.

Mr. Bell: General advice.

Mr. Cooke: Yes.

Mr. Bell: "And the amounts of allowances and annuities to which persons are entitled under this act."

Mr. Cooke: Yes.

Mr. Bell: "And to perform such other duties as are assigned to it by this act or by the minister."

In practical terms, that means the board could make a recommendation to the minister that either a class of individuals or a specific individual is entitled to receive moneys.

Mr. Cooke: Providing the act allows it, yes.

Mr. Bell: OK. To your knowledge has the minister ever made a payment, or authorized the making of a payment, where the funds were obtained not from the funds administered under the act, but directly out of the consolidated revenue fund?

Mr. Cooke: I am not aware of such a situation.

Mr. Bell: I note from the legislation, though, that there is an ability on the part of the minister to--if I may use the phrase--dip into the consolidated revenue fund on the occasion of a shortfall. Is that correct?

Mr. Cooke: I have no idea.

Mr. Bell: You do not know that the act contains that?

Mr. Cooke: No.

Mr. Bell: The minister has access to the consolidated revenue fund?

Mr. Cooke: I was not aware of that. Not in the public service superannuation fund. It says, "There is a fund to be known as the public service superannuation fund." Is it section 5?

Mr. Bell: I was looking at the old section 43 that says, "Moneys required for the purposes of subsection 1 shall be credited to the fund out of the consolidated revenue fund."

Mr. Cooke: That would be probably be the matching contributions.

Mr. Bell: No, augmenting from time to time allowances and annuities.

Mr. Cooke: OK. If people get escalations, for example, sometimes the basic pensions are increased and they are paid out of the public service superannuation fund for convenience, and the moneys are reimbursed or provided to the fund out of the consolidated revenue fund.

Mr. Bell: All right. When you trace that through, that is a payment made out of the fund for which the fund is not responsible, but it is made for convenience purposes and then the fund is compensated out of the general fund.

Mr. Cooke: That is correct.

Mr. Bell: That is one example where the board makes a payment that is not authorized by statute.

Mr. Cooke: It is authorized by order in council.

Mr. Bell: That is not statute, though, is it?

Mr. Cooke: That would be correct. Original pensions are authorized by statute and they are augmented by order in council.

Mr. Bell: Are there any other circumstances where the board has or does make a payment that is not technically authorized by statute but by some other means?

Mr. Cooke: As I said earlier in the meeting, we pay pensions and we pay reimbursement of contributions when someone leaves. Those are the only payments we make.

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Mr. Bell: No, you said to me before, you only make payments that are authorized by statute. I think we see now that you can make payments that are authorized by some other means, i.e., cabinet. Are there any other forms of authorizations that will prompt the board to make payments?

Mr. Cooke: Not that I can think of at the moment.

Mr. Bell: OK.

Madam Chairman: Is there anything that the Ombudsman's office would like to submit at this point? If not, I have a variety of views expressed by the committee. There are three that I have written down. One is that we have back the Minister of Government Services (Mr. Patten) or the Chairman of Management Board (Mr. Elston), depending on whom the pertinent party is at this time.

The second is to wait until the amendments are tabled by the Attorney General (Mr. Scott) which, if and when done, might facilitate this case being implemented.

The third is to find a way to pay, either by orders in council or cabinet or by whatever other means necessary, to allow the pension fund to make payments.

Could we direct our discussion directly now to what we should do and what recommendations should be made on this point?

Mr. Philip: Numbers one and three are identical, I think. Number three basically says we want to make the payment. Number one says the way of our finding out how to make the payment is to call the appropriate deputy minister, not the minister, before us. I think Mr. Bell's questioning and my questioning suggested that there may be a way of paying--and this was the direction Mr. Elliot was going earlier--through Government Services or, in this case, maybe Management Board now, through the consolidated revenue fund.

Before you can deal with the third suggestion, I think it seems reasonable to allow the appropriate deputy minister to present his or her views, as the case may be, and then a recommendation can be made.

Mr. Callahan: I think, Mr. Bell, as when you were questioning the witness, we are really referring to things like indexation which are really government policy. I would be very concerned, as admirable as I believe the standing committee on the Ombudsman is, that we should not usurp the power or try to fit something into a shoe that does not provide for it.

My opting would be for the middle one. I guess the middle one was waiting for the legislation. The report has not been debated in the House yet. It is certainly open to all parties to question why the amendments are not being placed before the House. I would feel more comfortable with doing it that way rather than bringing the deputy minister here and having him say exactly the same thing, because, even after all is said and done, I think it is pretty clear that the legislation does not provide for this. I think that is clear on the recommendations of the committee itself, in that it recommended that there should be changes to the legislation.

We are sucking and blowing at the same time if we report that and then bring someone here to question him about it. What I am going to vote for, anyway, is the middle one. I do not know what the rest of you are going to vote for. That is all I have to say.

Mr. Lupusella: I think we should move it in the form of a motion. . . . that this committee will recommend that legislation. I do not think the board at this time is bound to a decision taken by the standing committee on the Ombudsman unless legislation is final. I think that is a good way to go.

Mr. McLean: Perhaps there is a way, and it may be worth while looking at, if the Minister of Government Services or his deputy appeared before the committee to find out if there is any way that this could be looked after. If that does not coincide with what we want, then it is the legislation. But I would think somebody from Government Services could certainly tell us whether or not there is a way that it can be done. I think that in there it says either Government Services or the superannuation board.

Mr. Elliot: Pretty well the determination I have in my mind at this point in time is that to make an individual wait until the legislation is passed in a case a committee previously clearly found to be a situation where the person was being deprived of due recompense pension-wise is being a bit unrealistic. I concur with what my colleague here just said. I think ways should be found in the interim to accommodate the payment. The long-range plan should be to get in place the legislation that would not allow this type of thing to happen again.

Mr. Bossy: I have to analyse that the recommendation the previous committee made for compensation was in error. I have to assume they were in error to recommend compensation on the basis that they did not identify where the source of the funding should come from. I think the committee, knowing that the legislation which dealt with the case did not provide for compensation, was in error at that time to recommend compensation.

I would support the second recommendation, that we should try to influence or help influence an amendment somewhere to the legislation that might take care of this. But I cannot support funding for the immediate case before us, because of the identification of actual funding. To reopen the whole case, which it would lead to, to bring the minister in here, to have to reopen all the circumstances that led to that decision, I could not be in favour of it.

Mr. Pollock: If there was legislation brought in, it could not be retroactive, though, could it?

Interjection: Sure.

Mr. Pollock: Normally, that is not the case, though, is it?

Mr. Bell: I do not think you need retroactivity specified. It is an interesting point whether the circumstance giving rise to the payment has to exist only after the legislation is enacted or whether it can cover prior circumstances.

That is something the committee should stick on its agenda for discussion, as and when the bill is tabled, because it will make a big difference. Since you investigate only history, it may be an amendment without practical significance for a number of years.

Mr. Pollock: According to that, if you do make the legislation retroactive, that kind of flies in the face of what Mr. Cooke has said, though, that he could not reintroduce any evidence from the case.

Mr. Bell: No.. Because under the amendment the moneys will come out of the consolidated revenue fund, I do not think it makes a difference. I think it would be a payment that would not, if you will, upset the books of the fund. It would be a payment coming from another ledger, if you will.

Mr. Pollock: But you realize what I am talking about?

Mr. Bell: I do.

Mr. Pollock: He could not introduce any new evidence but you can make the legislation retroactive. That is what I am getting at.

Mr. Bell: Yes, that is a possibility. Yes, you are right. It is possible. Your point is well taken.

Madam Chairman: Before I proceed with the last two people on the list at the moment, I want to clarify the record. Mr. Philip corrected my three alternatives. The two alternatives we seem to be discussing are: (1) that the ministry come before the committee and discuss any alternative that might be available to pay out this amount and (2) merely to wait until the amendments are tabled in the Legislature and something is facilitated. Those are the two.

Mr. Lupusella has put a motion forward on the second alternative, not formally and not seconded, which was to wait for the amendments, to have it tabled, debated and then implemented. On those two points, Mr. Elliot and Mr. McLean. Then we could have the motion put forward formally.

1520

Mr. Elliot: Do you want a seconder for the motion?

Madam Chairman: Good, if you want to second Mr. Lupusella's motion.

Mr. Elliot: I will second the motion and then speak to it.

Mr. McLean: On a point of order, Madam Chairman: When did he make

that motion? I did not hear it.

Madam Chairman: I heard a motion from Mr. Lupusella. Mr. Lupusella, would you consider that to be your motion, that we wait?

Mr. Lupusella: So moved. I mentioned as a form of motion when I made the reference to my statement that we should move a motion.

Madam Chairman: So would you claim that you did move a motion?

Mr. Lupusella: Yes, I moved such a motion.

Madam Chairman: Thank you. The motion is put forward that we wait until the amendments are enacted in the Legislature. That will facilitate a way of paying this out.

Mr. Elliot, I have been informed that there is no need to second this motion, but you did, so we have a formal motion that has been seconded, although the clerk tells us that we should not have done that.

Mr. Elliot: I am very happy that we had a motion, otherwise I thought maybe I was hearing something there for a bit. I thought I had heard a motion being made.

I think this is the final resolution of a long, involved situation for the individual concerned. The way I heard the information given to us was that the final determination of this problem would have been there in the 12th report of this committee had there been a determination of the amount of restitution, and the only reason it came again in the 15th report is that the amount of restitution had to be there. I really do not think we, as a committee, should at this point in time start talking about other committees that had longer periods of time to look at a problem like this, as to whether they are correct or not.

I really think the only thing we have to determine here is that, first of all, now we have two ways of making sure this individual gets the amount of money that he has coming. I think this is one way. I cannot see any problem with adding to this the fact that in the interim that it takes the legislation to be put in place, some way such as having a deputy minister here to pursue alternative methods of payment be encouraged. I fully support this particular motion as being one of the two things we might do.

Mr. McLean: I am a little surprised that the government members are stonewalling to wait until legislation is passed. That could be a year.

Mr. Philip: That is not fair to Mr. Elliot's statement.

Mr. Elliot: That is not what I said.

Mr. Philip: Mr. Elliot certainly is not saying that.

Mr. McLean: I think if we had either the Minister of Government Services or the deputy minister before the committee to explain to us, perhaps there would be a way there could be a payout. If there is, why wait for legislation to be passed? That was my understanding of Mr. Lupusella's resolution.

Madam Chairman: I take your point, Mr. McLean, that Mr. Lupusella's

motion does not include having the deputy before us and then further waiting for the amendments. Mr. Lupusella's motion before us is singular and it is straightforward: we will not do anything until the amendments are accepted in the legislation.

Voting for Mr. Lupusella's motion does not give us the alternative of first entertaining the deputy minister of the appropriate ministry to come before us and discuss this matter. That is how I read the motion that is before us. I would not say it includes both alternatives; it is singular. We would do nothing until it is tabled in the Legislature.

Mr. Philip: On a point of order, Madam Chairman: I think the principle of Mr. Lupusella's motion is that there should be legislation to deal with it. What Mr. Elliot is trying to do is to say, "Notwithstanding the fact that there should be legislation to deal with it, I would like an amendment that says that in the interim, while we are supporting the principle of the legislation, we will call before us the appropriate deputy minister to see whether or not anything can be done under the present system." I do not see that as a contrary resolution.

I wonder, since we have not heard Mr. Lupusella's motion, if perhaps the clerk could read it out and if it might not be possible to accommodate what Mr. Elliot wants to do as an amendment to Mr. Lupusella's motion.

Madam Chairman: I will permit the clerk to read the motion by Mr. Lupusella, but I would say, Mr. Philip, that yours would be an amendment to the motion that was put forward by Mr. Lupusella; Mr. Elliot's suggestion as well would be an amendment to the motion. The motion does not stand as carried. That would be my interpretation. We could get the motion on the table now. Then, if you want to suggest the amendment you have just done, we could vote on that.

Clerk of the Committee: Mr. Lupusella moves that the committee delay action on this case until amendments to the Public Service Superannuation Act be introduced in the House.

Mr. Philip: I thought it was different. I thought he had moved that the committee recommends that the legislation be introduced in the House. I thought that is what Mr. Lupusella was moving.

Madam Chairman: Mr. Lupusella, do you think you could clarify the motion?

Mr. Lupusella: I will not clarify with your intent because, as the situation stands now, the superannuation board is not bound by the decision of a select committee on the Ombudsman. Therefore, if we have to believe the great, Honourable Roy McMurtry, who was Attorney General of Ontario at the time, he stated that any decision taken by the select committee and agreed to by resolution of the Legislative Assembly requires to be implemented by an act of the Legislature in order to be legally effective and binding. As the situation stands now, the board is not legally bound by any decision taken by the committee. The only way to do that is the introduction of legislation in parliament. It is as simple as that.

Mr. Philip: Would you ask the question again? Maybe he will answer you.

Madam Chairman: Mr. Lupusella, before the counsel has a little

palpitation problem, he let you get away with that expression once already, in quoting, and he is now dying to clarify what you have just commented. Could you put the motion, as you thought it was, before the committee? Then I will entertain any amendments to that motion.

Mr. Lupusella: I agree with the content of the motion which was just read into the record.

Madam Chairman: Would you read that into the record again, please, clerk?

Clerk of the Committee: Mr. Lupusella moves that the committee delay action on this case until amendments to the Public Service Superannuation Act be introduced in the House.

Madam Chairman: Do I have any amendments to that motion?

Mr. Philip: In order to move what Mr. McLean and Mr. Elliot and I want, we would have to contradict the motion. I would suggest, if those members of the committee want to do what Mr. Elliot, Mr. McLean and I have voiced, that they defeat the motion, and that either Mr. Elliot or Mr. McLean or I move a new motion that would incorporate the idea of the need for the legislation, but also, in the interim, calling the appropriate deputy minister before the committee.

Mr. Bossy: On a point of order: Was the motion in order as presently put?

Madam Chairman: It is a motion before the--

Mr. Bossy: If the motion is in order, the only thing anyone else can do is put an amendment to that motion. Until that is done--

Mr. Philip: But you cannot move an amendment that would go against the principle of the motion. His motion is that no action be taken.

Mr. Bossy: Let us vote on the motion.

Madam Chairman: All those in favour of Mr. Lupusella's motion will please indicate. Five in favour. All those opposed? Four. The motion carries.

Motion agreed to.

Madam Chairman: Mr. Bell has a few comments to make with respect to previous comments.

Mr. Bell: Mr. Lupusella, the opinion of Roy McMurtry you have been reading from is an opinion he expressed some years ago before this committee. I think, for the record, Roy McMurtry's opinion is not definitive on the question of what status this committee's or any other committee's recommendation has, which is adopted by the House not as a resolution but by a motion. There are two different schools of legal opinion. Roy McMurtry is on the one side; there are a number of others on the other side, including your counsel.

I might say that it was a matter--

Mr. Callahan: It depends on the legal definition.

Mr. Bell: Yes. It was a matter of debate in the House when Mr. McMurtry was Attorney General. If I recall specifically, the official opposition at the time took a relatively strenuous position opposed to Mr. McMurtry's opinion. It is not a very easy issue to determine, but the record should not be read as the gospel according to Roy McMurtry, because that is not the case.

Madam Chairman: Mr. Lupusella, do you need a response to that, or can we leave that for further discussion outside of the committee room?

Mr. Lupusella: With the greatest respect for what Mr. Bell has said, I do not think this committee has the legal authority to give orders interpreted as law in Ontario. This committee has the authority to make recommendations.

Of course, we heard Mr. McMurtry's position that any board or any agency is not bound by the decision taken by this committee. Even though his point is not law, we have to understand that the recommendation made by this committee is not law in Ontario. So we are even, I think, on the argument.

Madam Chairman: Thank you, Mr. Lupusella. Mr. Cooke, I think we have completed our time with you, as the motion was carried. We thank you very much for coming.

Mr. Callahan: Madam Chairman, could I move a second amendment which may achieve, perhaps, what everyone wants? It is that in the interim--

Madam Chairman: The motion passed, though.

Mr. Callahan: I know, but this is a second motion and it is not contrary to the first one.

Madam Chairman: OK. Before you depart, Mr. Cooke, there might be a motion on the table that might interest us all.

Mr. Callahan: I am told we have two legal opinions, one in 1984 and one in 1983, one of them being six pages. I wonder if we could move that we seek a legal opinion as to whether or not there is any avenue through which this claim could be paid without the necessity of the amendment.

Mr. McLean: That is what we wanted to do.

Madam Chairman: You voted against--

Mr. Callahan: No, I did not; I voted against coming back here and spending time in the committee and hearing exactly the same things that we have heard from opinions that have been expressed through previous legal opinions and so on, some of the ones that Mr. Bell has given us and canvassed in the legislation.

Mr. Elliot: I think there is a cost involved with getting this sort of legal opinion that I do not think at this point in time we should, as a committee, incur.

Mr. Philip: There is nothing wrong with asking the Attorney General for an opinion. It would not incur any cost to the committee. I am willing to

support what Mr. Callahan has said if he wants to move it as a motion.

Madam Chairman: Mr. Callahan, do you move that we seek a legal opinion to find a means, if there is a means?

Mr. Callahan: If there is any way of this sum being paid without the necessity of the legislation being amended.

Mr. Bell: Mr. Callahan, could I suggest--perhaps not as a legal opinion but maybe as a legal legislative opinion--that that question be put to the minister, the person who is in charge of administering the act? Ask him, given the circumstances of this recommendation and this payment, is there a vehicle that is available?

Mr. Callahan: You know where the opinion is going to come from anyway, though: the Attorney General.

Mr. Bell: Well, yes.

Mr. Callahan: Or the Ministry of the Attorney General.

Mr. Bell: You might be right. Maybe it should come through the minister, though, who has, after all, been involved in some degree with it in the past.

Madam Chairman: Given Mr. Bell's comments, Mr. Callahan, would you like to make any changes to your motion?

Mr. Callahan: I think I will leave it as it is.

Madam Chairman: Do you have a legal opinion, Mr. Bossy? Then I will call the question.

Mr. Bossy: On a point of order concerning the validity of the motion, Madam Chairman: I do not feel that the motion could be in order, since we have passed the other motion to delay any further action on this case until it is dealt with by the Legislature. Unfortunately, I find myself in a position here where I would have to vote against that motion.

Madam Chairman: The motion did read that we delay any action, and the motion as put would be action.

Mr. Philip: That is what you voted for, Mr. Callahan.

Mr. Callahan: "On payment" is the wording.

Clerk of the Committee: "On this case."

Madam Chairman: "On this case" is the thing, and you voted in favour of Mr. Callahan's-- I suggest that Mr. Bossy's point is well taken and that no further motion is to be made on this case. Thank you, Mr. Cooke.

We have one final case to deal with, which is the workers' compensation case, Mr. N. Could you tell us what tab that is at?

Mr. Bell: Tab R.

Madam Chairman: Yes, tab R. The top letter, for those who do not

have the tabs, is dated December 29, 1987, and has "Re: Mr. N."

Mr. Bell: I think we can accelerate this. As Ms. Morrison's memorandum, which is attached to the letter of December 29 to me, indicates, the Ombudsman initially, in a July 1981 report, made a recommendation that the appeal board reconsider its decision with a view to granting the individual an award in some amount. Is that correct?

Mrs. Meslin: That is correct.

Mr. Bell: The board did reconsider and came to a determination which initially denied the person any amount.

Mrs. Meslin: That is correct.

Mr. Bell: The Ombudsman did not consider that very satisfactory and ultimately took it to the committee. The committee decided to support the Ombudsman's recommendation and sent it back to the Workers' Compensation Board with a view to granting the individual an amount of a benefit. Is that correct?

Mrs. Meslin: Yes.

Mr. Bell: The board has now done that and has awarded the individual a temporary supplement in the amount of \$927.32 for a period of a year. That is it. The committee, in its recommendation, sent it back to the board for a reconsideration. There was to be a money payment, but the quantification of same was left to the discretion of the board. Correct?

Mrs. Meslin: That is correct.

Mr. Bell: I understand that what brings it here today is that the complainant, through your office, has taken issue with the amount.

Mrs. Meslin: Yes.

Mr. Bell: And, through your office, has requested of this committee to do something. Is that right?

Mrs. Meslin: Yes. We have indicated to the complainant that we would bring it to the standing committee to determine if the board's action is a reasonable resolution of the Ombudsman's recommendation.

Mr. Bell: To put it in the language of the standing committee, I think the issue for this committee to determine is whether the award, as quantified, complies with the recommendation of this committee.

Mrs. Meslin: That is correct.

Mr. Bell: What do you have to say about that?

Mrs. Meslin: Absolutely nothing.

Mr. Bell: You have nothing to say? No comments to make about the amount and how it was arrived at?

Mrs. Meslin: Our concern was that the one-year amount was not reasonable. However, understanding the wording of the recommendation of the committee, we are at a loss to argue against it.

to inform the committee that the committee's recommendation has been implemented. The Ministry of Health special report, Mr. F, has also been implemented. So it is just general information.

Madam Chairman: Any further comments, Mr. Bell? None from the committee? All right. We stand adjourned until April 13 at 10 a.m. during regular hours.

Mr. McLean: Or at the call of the chair.

Madam Chairman: Or at the call of the chair. Thank you, Mr. McLean.

The committee adjourned at 3:44 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ORGANIZATION
ESTIMATES, OFFICE OF THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1986-87

WEDNESDAY, APRIL 13, 1988

Draft Transcript

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Carrothers, Douglas A. (Oakville South L)
Charlton, Brian A. (Hamilton Mountain NDP)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
McLean, Allan K. (Simcoe East PC)
Philip, Ed (Etobicoke-Rexdale NDP)
Pollock, Jim (Hastings-Peterborough PC)

Clerk: Decker, Todd

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:


Meslin, Eleanor, Executive Director
Mills, Allan, Controller

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN


Wednesday, April 13, 1988

The committee met at 10:10 a.m. in committee room 2.

ORGANIZATION

Maclean Chairman: If we could call this meeting to order. Welcome back.
The clerk is just handing out a letter that was received from the British
delegation-

0-1010 follows



mp
(Madam Chairman)

G-1010-1

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April 14, 1988

1010

~~The clerk is just handing out a letter that we have received from the British delegation. They are the British House of Commons select committee on the parliamentary commissioner for administration. They are coming to visit Toronto and they have expressed an interest in meeting both our committee and that of the standing committee on the Legislative Assembly. They are going to be in Toronto on Wednesday, April 27, and would like to meet with us and the Legislative Assembly jointly at that time.~~

Mr. Philip: During the daytime?

Madam Chairman: During the daytime. In fact, in the morning during our regular meeting time. We have tentatively arranged it with them. I would like to make sure that the committee is agreeable to this. The negative side of it is that we are really foregoing our April 27 meeting and will not be able to deal with the items that perhaps we had on the agenda for the day, although we will have an opportunity to meet with the committee here and the Legislative Assembly committee and to discuss similarities or differences and just have some kind of a discussion at that time. We would also hope to host a lunch for them that day and welcome them to Queen's Park in the manner which would be acceptable.

Herb Epp is the chairman of the Legislative Assembly committee. It seems acceptable to them to join in on this meeting. I would just like to hear from the committee if they have any objections to this?

Mr. Philip: Do you want a motion first?

Madam Chairman: I do not know that it is necessary. We are meeting during our normal time.

Mr. Philip: It would be a tremendous breach of protocol if we did not, considering--

Madam Chairman: Have a motion?

Mr. Philip: No. I mean if we did not meet with them regardless of what we might have scheduled. We could have the most important thing on our agenda scheduled. I just do not think we should turn down a group like this. Second, I think it provides an opportunity to gain some insights into their system and I find that a useful arrangement. I just think it is a good idea.

Mr. Charlton: I would just echo those comments. It has been a while, but from time to time committees from this place have adjourned to Westminster and we request the same kinds of things when we are there. It is appropriate that we provide and accommodate as much as we can.

Madam Chairman: I think it is an excellent opportunity. I just want to make sure that I was clear that we would be meeting with the Ombudsman's office and I think they would be going over to the Ombudsman's office as well, and also that we would be providing the lunch I presume out of our committee budget.

Mr. Pollock: I am certainly glad to welcome them.

Madam Chairman: Right. I think we have a--

Mr. Rowe: I think it is unanimous here that we should do this.

Interjection.

Mr. Bossy: ?? Ombudsman's budget?

Madam Chairman: I think we will probably share it with the Ombudsman and the Legislative Assembly committee budget.

Mr. Philip: Where will be meeting them? At the Ombudsman's office or here?

Madam Chairman: We are going to try to find somewhere bigger here and host it at Queen's Park. We will find another room. I do not know if room 228 would be available, but that would probably be an appropriate one.

Mr. Philip: If it is at all possible, could we not request the Amethyst Room? It is a much nicer room.

Madam Chairman: I think we were scheduled for the Amethyst Room on April 17, if I am not...we actually have the Amethyst Room back for a while anyway starting next week. I do not think there will be any problem with that anyway.

The second item that I just wanted to discuss, unless there is...we have to think to next Wednesday, which is April 20 and the day that the budget is coming down. I would like to propose that we still meet in the morning at the committee's discretion, but we do have a number of things to deal with. Now that April 27 will be consumed by meeting our British delegation, I would propose that we still meet next Wednesday, unless there is any objection from the committee. You know the hustle and bustle that will go on that day, but I would like to...the Ombudsman is ready to come next week and to deal with his report. Unless anyone is--


Mr. Philip: Which report is this? On extended jurisdiction?

Madam Chairman: No. This is his annual report, Volume I. The one that we have not dealt with yet. I think that would be the closing part, so that we can assemble our draft report.

Mr. Pollock: Inaudible...meeting in the morning, I would not think--

Madam Chairman: OK. It is just that some people have...great. Any objections?

G-1015 follows



Good, so we will meet next Wednesday as usual.

1015

ESTIMATES, OFFICE OF THE OMBUDSMAN

Madam Chairman: We have on the agenda today to discuss the estimates. Although the year has passed and although there is a motion before the House to approve all estimates that have not been dealt with, I thought it would still be good for us to have some kind of budgetary fiscal discussion with the Ombudsman's office to get some familiarity with it for the new members. The members who have been on this committee for some time will be a little bit more familiar with it in any event. I think it could be a very helpful interchange and exchange of ideas and I think we should commence whenever we can.

The clerk is just giving out to you a background of the information that was submitted by the Office of the Ombudsman to the Board of Internal Economy. It is a little bit more detailed than the summary you have been handed before.

We have Eleanor Meslin and Allen Mills with us today. I am sorry, Mr. Mills, I do not know your title.

Mr. Mills: Controller.

Madam Chairman: Controller of the Ombudsman's office. Eleanor, would you like to start?

Mrs. Meslin: Yes, I would like to start by summarizing a few things that may help you to make some evaluation of those estimates. The year 1987-88, which is the one we are speaking of, was a year for the Ombudsman of consolidation and not of growth. All program expansions were achieved by reallocation of existing human and financial resources. There was no increase in budget sought at that time and the staff complement remained the same at 122.

Our salary ranges are identical to those used by the public service. Zero-base budgeting involving all our managers has proved itself and will continue to be used. There were two unreported items in the estimates. One was a \$21,000 item that was to be returned to the Treasurer (Mr. R. F. Nixon) and was, of course, from our approved estimates of 1986-87, as a result of the cancellation of the levy for the public service superannuation fund. We had that money given to us and we gave it back because the levy was cancelled.

The second unrecorded item is as a result of the change in the Canadian Radio-television and Telecommunications Commission's regulations permitting Bell Canada to surcharge \$1.50 for each collect call. We introduced an Inwats 1-800 line. This made our office more accessible and achieved a saving of approximately \$6,900 per year.

In terms of our native commitment, the service to the native communities was strengthened by the deployment of a northern native liaison unit, so that we have one Toronto-based employee and one Timmins-based employee functioning in the native communities. The initiative for the northern native liaison unit was in response to the Ombudsman's and standing committee's visits in the fall to a number of northern reserves.

In the area of our part-time field officers, the cost benefit to date has justified the existence of those field officers. Last fiscal year, that is the fiscal year we are speaking of, the Windsor, London and Sault Ste. Marie field officers handled a total of 863 complaints with an additional 50 files in progress. In the case of the Windsor officer, there was a 78 per cent increase in complaints received from the area after we put the officer in place.

A total of 180 community outreach projects have been completed by these officers. Since the closing of the regional office in North Bay and its reopening as a field officer service, the same complaint-handling workload as prior to closing has been maintained. As many as 30 outreach contacts were made in the two months after closing as were made in the entire eight-month period prior to closing, so that the reintroduction of a part-time field officer into North Bay has kept the workload and increased the outreach workload.

By the London officer alone, \$23,344 was acquired for complainants as a result of the intervention of this worker in nine separate cases. In addition, the referrals that we have made in these field offices with MPPs has added up to more than 100 between mid-August 1986 and January 1987, just with the establishment of those field officers.

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In conclusion, the Ombudsman's commitments upon taking office remain unchanged. He had three commitments: (1) to bring a sound system of fiscal control to the Office of the Ombudsman; (2) to make the services of the office more accessible to the public; and (3) to improve staff management, morale and efficiency.

In addition, to date, there have been no criticisms of this office by the Provincial Auditor, and we are certainly hopeful that this will continue to be the case. The reallocation of existing human and financial resources, combined with sound management and planning policy, is showing the desired results. We have a strengthening of the administration in the office and a greater service to the public. We are doing more without requesting an increase and we hope we are doing it better.

Madam Chairman: Thank you, Mrs. Meslin. Mr. Lupusella.

Mr. Lupusella: Thank you very much for your presentation. I noticed that, on the paper which is before me, the actual estimated cost for 1986-87 for the total operation of the office is \$6,546,700 which, of course, is increased from the actual cost of estimates in 1985-86 of over \$6,052,000. Now, I understand that in northern Ontario, in relation with native groups, you are planning to establish a northern native liaison unit composed of two employees already on staff. The total cost appears to be \$95,000.

Mrs. Meslin: Yes.

Mr. Lupusella: How are you going to spend the remaining increase?

Mrs. Meslin: That is not an increase; that is a reallocation. What we are doing and what we have done in previous years is that we have reduced some of our complement in one area in order to put new complement in another, so that when someone leaves, we often do not fill the vacancy if we can manage it, in order to put another position, as we did with the northern native liaison officer. So the figures you see that look like an increase are just the regular cost-of-living increase that the government grants us. It is not something we ask for; it is in the normal process. We asked for no money.

Mr. Lupusella: OK. I was confused on the two figures.

Mrs. Meslin: Yes, I can understand that.

Mr. Lupusella: I thought there was an increase. In fact, it is a reallocation of funds.

Mrs. Meslin: It is just a reallocation of funds.

Mr. Lupusella: OK. Thank you.

Mr. Philip: I have a few questions. Has there been an evaluation done yet of the additional native programs officers?

Mrs. Meslin: We have done an evaluation of our Toronto officer because he has been with us for three years. The evaluation that was to be done in our Timmins office with Mary Iahtail, whom I think you might have met, had to be held off because she accepted a one-year secondment to Moosonee to a special intergovernmental project and she asked that the evaluation await her return. So we now have a temporary replacement for her.

Mr. Philip: I was thinking less of the personnel per se, although you cannot remove them from the equation, and more in terms of the needs that are being met, the efficiency in meeting them. Has an evaluation been done of the operations of those officers, of those positions, notwithstanding the personnel in the position?

Mrs. Meslin: I understand. We have not done specific evaluations. My feeling was that an evaluation, to be a reasonable one, had to include the people involved. We have had excellent feedback, especially from the northern areas we visited that now are being visited on a much more regular basis. When I say "regular," I mean maybe every five months, whereas there had been no visits at all before the committee eventually went up there. We have had a number of cases referred to us because of that native officer visiting them.

Mr. Philip: Are most of the cases still nonjurisdictional?

Mrs. Meslin: Yes.

Mr. Philip: What is your success in passing those on to the federal authorities and obtaining any kind of results?

Mrs. Meslin: On at least two occasions, Dr. Hill has felt that the issues were important enough that he authored letters directly to the minister; at the time I think it was Mr. Crombie. He authored letters himself asking for particular interest to be paid, and Mr. Crombie wrote back very positively.

Mr. Philip: Is there any feeling yet of any kind of movement on the

part of the federal authorities concerning the need for a federal Ombudsman, or are you still at the same stalemate we were at for the last 10 years?

Mrs. Meslin: With the present federal government we appear to be at the same stalemate. They do not see a need for it, even though the last Canadian ombudsmen meeting sent another letter urging that this occur.

Mr. Philip: In terms of the types of cases obtained as a result of the extension into northern native programs, what are the chief complaints? Is there any pattern as to where the major problems seem to lie?

Mrs. Meslin: The major complaints appear still to be with the Ministry of Natural Resources, because it touches more often on a number of the areas that affect natives. But we have had a broad cross-section of complaints. Some are employment complaints that are quite interesting, which we are also looking into.

Mr. Philip: So there are really no what you would call systemic patterns that you could identify that could be corrected through general administration changes of any sort?

Mrs. Meslin: Not that we have seen, with the exception of housing, which we will be reporting on.

Mr. Philip: With the Windsor office, is the big complaint similar to what you are getting in the Toronto offices and the Sudbury offices, the major one being worker's compensation?

Mrs. Meslin: Precisely.

Mr. Philip: So there is no particular pattern there that is any different from any other industrial city.

Mrs. Meslin: No. It is very interesting. Because we now have the new part-time offices, we have been looking to see if there are areas in particular places that differ, and they do not to any great extent.

One of the positive aspects seems to be that the one-on-one relationship and outreach is making people a little more aware of our jurisdiction, so we do get proportionately more jurisdictional complaints, although the nonjurisdictional ones are still high. If you look at them in comparison to Toronto, there are fewer, proportionately, than there were, and I think that is because the individuals are going out to these various communities and familiarizing them with our jurisdiction.

Mr. Philip: So you are saying there are fewer nonjurisdictional complaints in Windsor than in Toronto?

Mrs. Meslin: On a proportional basis, yes.

Mr. Philip: Yes, that is what I mean, percentage-wise.

Mrs. Meslin: Yes.

Mr. Philip: You have been able to keep your costs of operations down. Do you have any pattern as to the waiting time now for resolving problems? Is it increasing or decreasing? Has your economy drive in any way affected the length of time that a client has to wait in order to have his case dealt with?

Mrs. Meslin: I will be glad to answer it. I think that Dr. Hill wants to address it in great detail in his statement to you next week and in the follow-up, so I would appreciate it if you would wait for that.

1030

Mr. Philip: OK. One of the things I would like to discuss with Dr. Hill next week, and you may have some comments now, is that there is some very interesting work being done in the regulations committee. I think there is concern all over the world regarding the accountability of regulators and of people about civil servants who are able to have a substantial impact on people's lives through the regulatory process without any kind of really strong supervision either by ministers or even by deputy ministers sometimes, or by the legislative process. Are you getting very many complaints concerning the abuse of power or of the regulatory process, and is this an area that would be of concern to the Ombudsman?

Mrs. Meslin: We always get some. They are not overly significant, but certainly some changes in the regulatory process might be worth while. One of the suggestions, I think, that is coming up in that committee report would have committees reviewing these regulations, and the administrative fairness that goes along with that would go a long way to helping those problems. From my own point of view--the Ombudsman has not seen the report, but I have seen it--I think that is certainly very highly commendable and supportable.

Mr. Philip: I think what you have seen, in fairness, is not the report but the draft research--

Mrs. Meslin: Some of the research. Yes, that is true. I am sorry.

Mr. Philip: --of the things we are dealing with, because we have not written the report yet.

Mrs. Meslin: No.

Mr. Philip: Are there any particular recommendations you would have that might be useful to the committee? I think the Ombudsman committee, the public accounts committee, the legislative committee and the committee dealing with regulations should be concerned about that report. It will have an impact on all of us. Do you have any recommendations, or would you prefer to have Dr. Hill comment on that?

Mrs. Meslin: I think that Dr. Hill should comment on it. Just in passing, one of the things I noticed that was mentioned in the research was notice being given through the Ontario Gazette. I would hope that when if dealt with Ombudsman matters, the Ombudsman would be notified. I do not know whether it would be necessary to go so far as--whether it went in the Gazette or not, the Ombudsman would be notified prior to that.

Mr. Philip: I just do not see how that becomes practical, since you would get involved only if there were complaints, would you not? I am sure you are not going to review all the regulations.

Mrs. Meslin: I am talking about proposed rules that may be considered. If I read it correctly, it says that these proposed rules would be published in the Gazette for people to respond. All I am suggesting is that although there is no opposition to that, prior to that I would hope the Ombudsman would have the opportunity to see proposed rules that affect the Ombudsman.

Mr. Philip: So you would like to receive all of the regulations and comment on them?

Mrs. Meslin: Only those that may affect the Ombudsman, certainly.

Mr. Philip: But the only rules that would affect the Ombudsman would be those regulations that would be brought down by the Ombudsman, would they not?

Mrs. Meslin: No. Your committee has previously brought down regulations that affect the Ombudsman.

Mr. Philip: I think we are getting into a semantic problem as to what is a regulation and what is not.

Madam Chairman: Thank you, Mr. Philip. Any further questions?

With the worker's compensation, I think we have been getting a little smaller percentage of complaints in regard to the Worker's Compensation Appeals Tribunal. I was wondering if you expect that to decrease significantly. What will your role be at that time? My main concern is that if it does decrease, since this has been a major proportion of your work, you will not need as many people on staff to deal with the complaints.

Mrs. Meslin: Once the Worker's Compensation Appeal Tribunal became effective, we knew that that would be the case, although we are now getting a number of those complaints to us. In other words, a decision of WCAT which a complainant or an employer disagrees with comes to us. It is not in the same numbers and Workers' Compensation Board complaints are decreasing, but when we originally realized that, that is one of the ways in which we could reallocate.

We took some of our staff from the WCB team and spread them out elsewhere where there was a vacancy, instead of hiring on extra people, and we have not continued to hire on the extra staff. We have taken that staff complement and put them into things like the northern native liaison office. It has given us an opportunity to juggle, without hiring, into that group. I think that group originally had 12 people in it and it now has eight, so we are very aware of that.

Madam Chairman: In the public education programs, you say you have an outreach program, but has there been much increase in emphasis or concentration on any kind of public education programs by the Ombudsman's office?

Mrs. Meslin: One of the things Dr. Hill has done, and he will refer to it in a little more detail, is to make specialized areas of public education. He has introduced an ethnocultural officer who will do public education specifically in various visible minority and ethnocultural communities. That is another reallocation of a person who was doing one job to another job.

So outreach has expanded in that area and it has expanded in the disabled area, because we have one officer who works with only developmentally and physically handicapped groups, involving them in our outreach organization.

Madam Chairman: That is great. Any further questions on estimates from the committee?

Mr. Bossy: I would move that we approve the estimates.

Madam Chairman: Mr. Bossy has moved that we approve the estimates. Any seconders? Mr. Carrothers seconds. Any further discussion?

Mr. Philip: I think one of the reasons that the questions are few at this time is because the Ombudsman himself is not here. I realize why he is not here. We have to deal with it today because of the motion being brought down later today or tomorrow, whenever--I think it is later today--that the estimates have to be approved.

I think it should go in the record that is perhaps why the members do not have quite as many questions as we normally have on estimates. We are not in any way shirking our responsibility. We will be asking those questions when the Ombudsman does appear. There are a lot of policy issues that I do not think it is fair to ask now.

Mrs. Meslin: Just for the committee's clarification, I think the members will have a very good opportunity to ask, because Dr. Hill's statement, which is very, very full, looks at the last year in a great deal of detail. It will give the committee members opportunities to ask the questions that they might have otherwise in this case.

Madam Chairman: Thank you, Mr. Philip. We will make mention of that. Given the motion before the House, if we had not dealt with the estimates today, there would be really no other opportunity.

Mr. Philip: Have you received a letter from the chairman of the standing committee on regulations and private bills?

Madam Chairman: Yes, I have. I received it from the clerk. Our clerk is out now making copies of the draft research. I thought that since we did start the discussion with it today, perhaps if the committee members had a copy of it as well, then they too would be following your discussion if you pursue it further with the Ombudsman next week.

Mr. Philip: I just thought that members of this committee should be aware of what the regulations committee is considering. I found it fascinating. It is the first time I have been on the committee and I happened to come along right at the time when it was dealing with some of the theoretical aspects of regulations. It fits in nicely with this committee and with some of the other parliamentary reform that other committees are looking at.

That is why I suggested that perhaps this committee should look at it from an Ombudsman's point of view. I think the chairman and members of that committee are quite open to any suggestions that we might have from an Ombudsman's point of view. It does lead nicely into some of the things we may be concerned about.

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Madam Chairman: Great. Thank you, Mr. Philip. I had an opportunity to look at it briefly yesterday. I think the committee would enjoy just even glancing over it in more detail for those who are truly interested in the regulation aspect of this.

Mr. Philip: You will notice when you go through it that some of the recommendations are contradictory. So do not be upset by it. It means that the committee is going to have to deal with which one of several options that contradict one another makes the most sense.

Madam Chairman: There being no further discussion, could we have a vote on the motion before the committee, which is to accept the estimates.

All those in favour?

All those opposed?

Motion agreed to.

Madam Chairman: I do not think it will be necessary that we report to the House but I thought it advisable that we do have a vote in case it does become necessary.

ANNUAL REPORT, OMBUDSMAN, 1986-87

Chairman: There was one further point Mr. McLean had indicated he wanted to bring up if he were able to get here before we adjourned. It was with regard to the Ministry of the Environment case that we heard during our discussions in February. I do not know what the anonymized name of the company was. Company C?

Ms. Evans: It does not matter. It was the Ministry of Environment.

Madam Chairman: Without editing, what Mr. McLean had indicated to me outside of committee is that he is a bit concerned that this has not proceeded as quickly as he would have liked. He had understood that the Ministry of the Environment promised to appoint an adjudicator within a week. Upon reviewing the minutes, that is not exactly what they said, although they did give some indication that they would set out the terms of reference within a week. Then they would contact adjudicators to see who would be available and in what time span this would proceed.

We have received no communication. I was just thinking that we could get the clerk to communicate with the Ministry of the Environment and have copies of any correspondence that has gone on with this case sent to us. Then, if need be, if we feel upon review of the correspondence that they have not moved as expeditiously as the committee would have liked, perhaps we should get them before us again during one of our regular meetings.

Mr. Philip: Why not say that some members of the committee understand that little or no action has been taken and that they have expressed some concern? This does not have to be unanimous. You could say "some members" and then we do not have to take a vote on it. You could also say that, as chairman of the committee, you reserve the right to recall the Ministry of the Environment unless a satisfactory explanation can be provided in writing to you and to members of the committee. That acts as a very sobering kind of message.

Madam Chairman: The only problem with that exact wording is that we are not sure that nothing has been done. We just have not received any copies of the correspondence. I am not sure why not. There might have been a flurry of correspondence and we are just not aware of it. I would suggest that some committee members are concerned that nothing is being done or has been done.

Mr. Philip: That they understand nothing has been done.

Madam Chairman: "Understand." That we are not aware really of what is happening.

Mr. Philip: We are not making a charge. We are just saying that we understand that nothing has been done and, if we are wrong, please correct us and let us know.

Madam Chairman: We are concerned that nothing has been done because we really do not know.

Mr. Bossy: What we are really saying is that all we are asking for is a status report.

Mr. Philip: You can word it that way. The committee would like a status report and it reserves the right to recall if the status report is not to its satisfaction.

Madam Chairman: This has gone on for quite some time, and Mr. McLean did express his concern to me. As we may adjourn before he does come, I just wanted to deal with the matter.

Mr. Philip: Maybe he has some information.

Madam Chairman: We can press ahead with that anyway and let them know that we are still interested in what they are doing and we do not want another year to pass before we see any action.

Mr. Philip: One of the things that came out in the public accounts committee's visit with various congressional committees--it was the same thing in Ottawa; we had some of the Ottawa committees--was that they said the greatest weapon they have is the power to recall and that often it is useful to remind public servants that they may be recalled by the committee. Maybe we should be using more of that, simply a reminder that we may be recalling.

Madam Chairman: We have this allotment every Wednesday, and although the next couple of weeks are filled with our annual report, after that there is the opportunity to have them in for 15 minutes, or as long as we want, of course. There is no reason not to use that, and I think we should use it when we need to.

Mr. Philip: Let us get it in writing first.

Madam Chairman: We will do that probably later today. I know how quickly we move here.

Mr. Bossy: You commented that we have a time allocation every week, but I really do not go to meetings just for the sake of meeting. Maybe sometimes we can put enough on the agenda so that we can do in one meeting what would be accomplished if spread over three weeks and three meetings. I would sooner deal with an agenda that is loaded and spend a full two hours or more than try to sit every week just to go over one item here and an item there. We all have fairly busy schedules. We are trying to attend other committees.

Madam Chairman: Your suggestion is noted and that is perhaps why we did not meet last week. I did explain the problem we are encountering with estimates this week. Dr. Hill has been away. He mentioned to me a couple of months ago that he would not be able to attend today's meeting but is ready to proceed with the report, on which I expect ambitious and exciting questioning next week. I am sure it will be a full agenda for at least the two hours.

Is there any further discussion on any matters? Mrs. Meslin?

Mrs. Meslin: No, thank you.

Madam Chairman: Thank you very much. We are adjourned until next

Wednesday at 10 o'clock. I suggest you look over the volume of the annual report and be prepared to discuss that.

The committee adjourned at 10:48 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1986-87

WEDNESDAY, APRIL 20, 1988



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Carrothers, Douglas A. (Oakville South L)
Charlton, Brian A. (Hamilton Mountain NDP)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
McLean, Allan K. (Simcoe East PC)
Philip, Ed (Etobicoke-Rexdale NDP)
Pollock, Jim (Hastings-Peterborough PC)

Clerk: Decker, Todd

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. Daniel G., Ombudsman

Meslin, Eleanor, Executive Director

Morrison, Gail, Director, Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE OMBUSMAN

Wednesday, April 20, 1988

The committee met at 10:10 a.m. in room 151.

Madam Chairman: I call this meeting to order, recognizing a quorum. I would like to begin by giving the rough details of next Wednesday when we meet with the British committee that is visiting for the day. We hope to have room 228 because it is a larger committee room. We will be meeting at 9:45 a.m. instead of 10 o'clock next Wednesday. We will be meeting with them until approximately 10:30, our committee only. Then the committee on the Legislative Assembly will come into the same room and we will leave to continue our business elsewhere. The Legislative Assembly committee will meet with them from 10:30 until approximately 11:30.

We have planned a lunch, location still to be determined, but at a restaurant outside the Legislative Building. We would like attendance to be as good as possible, with your schedules. The afternoon will be spent at the Ombudsman's office, and all our responsibilities will be relieved at that time. Are there any comments?

Mr. Philip: We are adjourning to do what business?

Madam Chairman: We will most probably continue with the Ombudsman's report and our questions therein.

Mr. Philip: Then Dr. Hill will be with us after 10:30?

Madam Chairman: Is he available after 10:30?

Mr. Philip: Next Wednesday?

Dr. Hill: What time?

Madam Chairman: From 10:30 to 12 noon. Then I think we should press ahead and get this finished.

Mr. Philip: I have a problem in that the standing committee on regulations and private bills writing its report and proposals on changes in the place in which parliament can deal with regulations. I may have some problems. I will try to be there, at least in the initial stage, but I may not be over in the Ombudsman's offices.

Mr. Lupusella: We can do without you.

Mr. Philip: I agree, but who are you and I to argue with the rest of the committee?

Madam Chairman: That was just a friendly chat across the room. If you can, try to be prompt for 9:45, recognizing that the committee will only with us until 10:30. That is their only opportunity to have a discussion with this committee, other than in the informal setting of lunch.

Again today, we have the Ombudsman before us, Dr. Daniel Hill. He would like to open with some remarks, copies of which you have all be given. Afterwards, I suggest he be able to complete his remarks as he wants, and then there will be opportunity for plenty of questions.

ANNUAL REPORT, OMBUDSMAN, 1986-87
(continued)

Dr. Hill: I am sorry I could not be with you last session but I was taking what I felt was a well-deserved rest for one week in British Columbia, at which time I had an opportunity to meet with the British Columbia Ombudsman. It was a very delightful, restful, sunny week in British Columbia. The flowers are out, the daffodils are up, and I have come back a bit refreshed, so I am delighted to be here.

Mr. Philip: You got a beautiful tan.

Dr. Hill: Thank you. It is called brown on brown.

I would like to read my remarks regarding my annual report into the record. This time I prepared a table of contents so that later on, when you choose to ask questions, you can go directly to the section from which I was reading. You will note on the early pages a two-page table of contents for anyone who has a particular interest in a particular issue.

Madam Chairman, members of the standing committee on the Ombudsman, I welcome this opportunity to appear before you today. Your committee is seized with the task of assisting my office to fulfil our mandate. I consider our meetings to be vital for the continuing success of this office. When we last met in January, we discussed those cases where the governmental organization refused to implement my recommendations. This was our most important work. Let me say I was pleased and gratified that you supported our recommendations in all but one of the cases before you. Such support implies that our recommendations are well founded and based on thorough and impartial investigations. I hope you share my feeling that in the course of those two weeks in January we set the stage for a very open and mutually helpful relationship between us.

In the course of my remarks today, I intend to deal with the following areas: I will provide an update on matters outstanding from my annual report, including the progress of a number of special projects and the status of unresolved issues. I will report on the management improvements we have introduced to make our operation more effective and efficient.

Before I proceed, since this is a relatively new committee, I believe you should know my view of the role and function of the Ombudsman. As you are aware, the function of the Ombudsman is to investigate complaints against the decisions and actions of provincial governmental agencies. I believe every Ombudsman brings his or her personal philosophy to the task at hand. As a person who has spent much of his life working in the human rights field, I believe the right to complain, the right to be heard and the right to have corrective measures taken, if one has suffered from arbitrary and unfair governmental action, are indeed human rights.

For example, article 21 of the United Nations Universal Declaration of Human Rights guarantees the fundamental right of the citizen to reasonable access to the services of government.

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As Ombudsman, my policy for this office has and will continue to reflect my commitment and the historic provincial commitment to human rights, going back as far, I might say, as 1793, with Governor Simcoe's anti-slavery legislation, and up until 1944 with Drew's legislation against racial discrimination, then later with Robarts's and Davis's legislation and other legislation after that. That is what I refer to as a historic provincial commitment to human rights.

Commitment to accessibility: When I was sworn in as Ombudsman in March 1984, one of my priorities was to make this office as accessible as possible to all of Ontario, and by that I mean the new Ontario--multilingual, multiracial and multicultural. To achieve this goal, I undertook several major projects.

Regional services: One was an increased emphasis on regional services. We now have offices or field representatives in eight major population centres throughout the province. Our district offices are located in Kenora, Thunder Bay, Timmins and Ottawa. Our field officers are in Sault Ste. Marie, North Bay, Windsor and London.

I am delighted to report that the experimental field officer project, which I introduced two years ago, has proven to be a resounding success. I have decided to continue the project on a permanent basis.

I am also pleased to report that our study to determine the best possible location for an additional field officer in northeastern Ontario is now complete. I will be making an announcement in this regard in the near future.

Native program: My commitment to give all aboriginal people, particularly those in geographically or culturally remote communities, an equal opportunity to utilize this office remains a high priority.

Recently, our northern native program officer, Mary Lou Iahtail, accepted a one-year secondment with the Mushkegowuk council in Moosonee to prepare a position paper on aboriginal self-government.

Our native program officer, Allan Pelletier, acting as our provincial liaison co-ordinator of all native activities and resource consultant for all native complaints, is increasingly engaging in outreach efforts aimed at governmental organizations, such as the race relations division of the Ministry of Citizenship, the Ministry of Correctional Services and the Minister's Advisory Committee on Corrections, on the issue of native rights.

This is in addition to his regular program of contact with the native organizations across the province, which has recently focused on southern Ontario, visiting the Mohawk territory of Akwesasne, the Chippewas of Sarnia and the Chippewas of Kettle and Stoney Point. He has been instrumental in helping to resolve a number of cases involving native people.

Since the quality of our regional services are of the greatest importance to me, and due to the recent departure of our regional services director to resume a private law practice, I, with the assistance of my executive director Eleanor Meslin, will personally manage the day-to-day operations of our regional services staff over the next period of time so that we can take a closer look at the entire regional operation.

Special investigator for ethnocultural issues: Ethnocultural issues have an important place in my work as Ombudsman. As a first step to ensure that these issues are being dealt with sensitively and appropriately by this office, I recently announced the appointment of Ed Harrington as a special investigator working primarily with ethnocultural communities.

Mr. Harrington, a former star defensive end for Toronto Argonauts, who has served our office for 10 years, brings a wealth of experience to this position. Mr. Harrington's new position will involve a significant amount of community outreach and public education work to promote understanding of the office and encourage use of its services for those Ontarians who are members of ethnic and visible minority communities. His work is closely co-ordinated with the investigative teams and our native program officers.

To date, Mr. Harrington has established a working relationship with such diverse groups as the Society for Assistance and Defence of New Canadians and Ethnic Groups of Canada, the staff of the Metro Toronto Housing Authority, the Jane-Finch Community and Family Centre, the West Indian and Spanish chapters of the Rexdale Women's Centre, the executive council of the Jamaican Canadian Association, the South Asian Action Centre and the National Council of Ghanaian Canadians, to mention just a few.

Special investigator for the disabled: When I became Ombudsman, we had just entered the Decade of Disabled Persons, as proclaimed by the General Assembly of the United Nations in 1983. To further the accessibility of this office, I appointed a special projects officer to develop a community outreach program with Ontarians who are disabled. This special project was described in my last annual report and emphasized concerns by people in the developmentally handicapped community as they related to Ontario government policies and programs. In October 1987, I reviewed the project's results and decided to expand it to include the concerns of all disabled Ontarians.

Examples of complaints the special project officer considers are concerns about the quality of care provided by servicing agencies which are funded through the Ontario government; complaints from residents of provincial facilities for the developmentally handicapped concerning ministry policies, practices and priorities; and complaints which may on the surface appear to relate to municipal agencies, i.e., municipal transportation systems for the handicapped, but which in reality relate to policies and practices of the provincial government.

The special projects officer has contacted a wide range of agencies serving disabled Ontarians. Some of these include the Trans-Action Coalition, an umbrella organization that includes 60 different groups, the Office for Disabled Persons, the Advocacy Resource Centre for the Handicapped, Persons United for Self-Help in Ontario, Service Co-ordinators, the Ontario March of Dimes and the Metro Toronto Association for Community Living.

As a result of the information already obtained through the special project, I am presently considering a procedure whereby I would proceed with investigations on my own motion on behalf of persons who are unable to communicate or give instructions because of their disabilities.

Multilingual staffing policy: My commitment to the new Ontario is also reflected in my staffing policies for this office. I am proud to say my staff collectively speaks a total of 18 languages running the gamut from Amharic to Yiddish. In addition, we presently have 12 employees with French-language

capability and have designated an additional number of our future staffing vacancies as requiring French-language ability.

In my view, if government is asking the private sector to be equal opportunity employers, then it should lead the way and be a model employer in this regard.

Public education and community outreach: I am convinced that public education and community outreach are the most direct methods to make our services more accessible. Four years have passed since I made my commitment to expand public consciousness about the vital role and function of the Ombudsman. The load of this office reached an all-time high last year: 17,324 complaints and information requests were closed, representing an increase of more than 26 per cent since I became Ombudsman.

1030

These statistics indicate that we are reaching out to more people and reaching them more effectively. I attribute a large part of this success to our public education and outreach programs.

The activities of our communications and community relations units have expanded considerably during the last year. A major public education initiative was undertaken in the form of a Learn About Your Ombudsman campaign.

Community relations: This initiative involved 160 public service radio announcements throughout Ontario, rapid transit advertising, the participation by the mayors of 58 municipalities in declaring a Learn About Your Ombudsman Week and was capped with a very successful, first-ever open house held on December 10, Human Rights Day, when our Toronto office hosted more than 300 members of the Metro community.

The activities of our community relations unit also included organizing seminars, workshops and conferences for front-line service providers, meeting with representatives of many community organizations, attending at various public functions and distributing of thousands of public education materials.

Communications and publications: More emphasis has been placed on audio-visual materials. We have produced a 13-minute slide show and audio tapes on the role and function of the Ombudsman to assist our roster of public speakers when attending community functions.

Publications have been expanded to include posters and regional newsletters. Our multilingual fact sheets, now in 12 languages, have been expanded to include Korean, Hindi and Kannada.

More than 100,000 of our publications, pamphlets, brochures, our Equal Times and regional newsletters, multilingual fact sheets, posters and flyers, were distributed across the province.

Also here in Metro, large billboard advertising has been placed in 10 subway stations as a free public service. It did not cost us a cent.

Furthermore, in keeping with federal government guidelines, I have adopted a reasonable access policy for the Office of the Ombudsman materials. Individuals who are unable to read or use regular print materials because of physical disability may contact our public education units to request that the materials be transcribed into an accessible medium.

Every reasonable step is taken to ensure that access is provided. As a first step in this policy, our Equal Times newsletter has been transcribed into Braille and recorded on audio tape.

Annual report 1986-87: At this time I would like to update several matters outstanding from my recent annual report.

Special projects update: I will begin with the progress of two special projects. The first is my special investigation of the Timmins Housing Authority. When I published my annual report, I was in the process of reviewing the responses of the Timmins Housing Authority, the Ontario Housing Corp., and the Ministry of Housing to the tentative recommendations that had resulted from my investigation into the Timmins Housing Authority's administration of rent-geared-to-income housing in Moosonee. The problem for the most part involved native people, I might add, some of whom were living in tents in the most deplorable conditions.

Since that time, meetings between the chairman of the Ontario Housing Corp., senior officials of the ministry and the housing authority, myself and officials of my office have resulted in the satisfactory resolution of most of the issues raised by the report.

I believe my investigation has resulted in some very important changes to the way in which this housing portfolio is administered, and I intend to provide the residents of Moosonee with a summary of the findings of my investigation.

A number of issues were raised during the investigation which require further actions on the part of the ministry and the Ontario Housing Corp.

I have been assured by senior officials in these organizations that steps are being taken to study these issues and to implement changes which should satisfy the concerns I have raised. It is my intention to provide a full statement of this investigation in my next annual report.

I am also pleased to report on another project, our special study of psychotraumatic disability entitlement.

This project was initiated in 1986 to examine what I felt were recurring difficulties in the Workers' Compensation Board practices on adjudication of psychotraumatic disability entitlement; for example, the board's preferring the opinions of its own physicians over those of treating physicians, regardless of their qualifications, or the board's accepting that a worker has a psychological disability but denying entitlement on the basis of "personality factors", even though there was no prior history of emotional difficulty and the worker has a steady job record.

The study began with an overview of the board's legislation, policy and practices concerning claims involving psychological problems, and then went on to look at our files to see how individual cases were handled.

The study has now been completed and has been forwarded to the chairman of the Workers' Compensation Board for comment. Copies for the committee are available from the clerk.

I should make a final comment regarding the Workers' Compensation Board. We have, with the excellent co-operation of the board, particularly Dr. Elgie, obtained \$250,000 in benefits for disabled workers during the past year. While

this is a significantly lower sum than last year's, I would just point out that our WCB case load has fallen off dramatically with the establishment of the Workers' Compensation Appeals Tribunal. Regardless of the volume, we continue to experience a co-operative working relationship that has steadily evolved between our two offices.

At this time I would like to report on the unresolved issues mentioned in the annual report.

Public trustee: One concerned the lack of co-operation by the office of the public trustee in its dealings with my office. I am pleased to report that with the recent appointment of a new public trustee, all outstanding matters have been satisfactorily resolved and we had a number of them. I take this opportunity to commend our new public trustee for the co-operation and courtesy extended to our staff members and I look forward to a continuing excellent relationship.

Ontario Labour Relations Board: Another matter concerns the Ontario Labour Relations Board's rejection of the Ombudsman's authority to investigate the merits of its decisions.

As I reported, the Ontario Court of Appeal issued a unanimous decision on January 7, 1987, strongly supporting the Ombudsman's right to investigate the merits of the labour board's decisions. The labour board then requested leave to appeal this decision to the Supreme Court of Canada. This leave was denied with costs. This means that the labour board must not only pay its own legal costs, but ours as well. My staff is presently processing the 24 files that had been held in abeyance by the labour board, pending the Supreme Court's decision.

Proposed amendments to Ombudsman Act: Another outstanding issue, although not specifically addressed in the last annual report, concerns my proposed amendments to the Ombudsman Act. Some of you may recall when I became Ombudsman in 1984, I reviewed the amendments proposed by my predecessor eight years previously and I added several more which I considered to be of supreme importance to the better functioning of this office.

Unfortunately, to date, the government has taken no initiative to pass these amendments.

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One of these would permit the Ombudsman to make a special report to the Legislature or to comment publicly on a complaint when the Ombudsman believes it is in the public interest.

Another would make the Ombudsman responsible for conducting programs of public education and, I would add, similarly to the education provisions in the Ontario Human Rights Code, where the chairman of the Ontario Human Rights Commission and the commission must report to the public what initiatives they have taken educationally to inform and instruct the people of their rights under the Human Rights Code. I wanted a similar amendment to the Ombudsman Act.

Another would permit financial compensation where a government agency is willing to pay a wronged complainant but cannot, because it lacks the necessary statutory authority.

Finally, an amendment is proposed to deal with the problem of tribunals

that are functus officio. This means that any quasi-judicial tribunal that does not have rehearing authority in its legislation is presently unable to comply with an Ombudsman's recommendation to rehear.

There are two new developments regarding the amendments. First, I have been assured by the Attorney General (Mr. Scott) that the proposed amendments were approved by his staff after careful study and will be introduced in the House this spring. I certainly hope so. I assume that then the amendments will be brought to your attention for a review on second reading.

Second, the importance of the proposed amendments is underscored by a serious matter which has come to my attention in the last year. It relates to the nonpayment of social assistance to eligible individuals.

In three investigations conducted by my office in 1987, I concluded that the Social Assistance Review Board had been unreasonable in denying three individuals interim benefits pending their hearings and review board decisions, and I recommended that the board make the payments retroactively.

After receiving my report, the review board agreed that the assistance ought to have been paid to the complainants, but the board found itself unable to comply with my recommendations as, under the Family Benefits Act, an order that such payments be made can only be made prior to the date of an individual's hearing before the review board. My investigation and my recommendation had been made following the hearing.

The review board approached the Ministry of Community and Social Services in an effort to assist us, but the minister declined to order the payments by order in council, claiming he did not have the authority to do so and that the ministry had no other manner of payment.

I did not report these cases in my annual report, as the Social Assistance Review Board could not order payment but had made every possible effort to arrange payment to the complainants through the ministry.

This leaves a very serious situation in which interim benefits wrongly denied are not being paid to eligible, needy individuals and their families, even when the Social Assistance Review Board agrees that its decision to deny was made in error.

It is my understanding that the passage of the amendment allowing for ex gratia payments will provide the Social Assistance Review Board with the necessary authorization to comply with my recommendations in cases such as these.

Another example of how an obvious unfairness may remain unresolved because of the principle of functus officio involves a case under the Drainage Act where a number of residents of a municipality petitioned for the construction of a drain for their lands. Our complainant was not one of the petitioners.

The engineering firm appointed by the municipality to submit proposals about the construction of the drain and costs to be borne by each affected land owner proposed that the drain run through our complainant's property, and therefore he was assessed for some of the costs.

One of the original petitioners appealed this proposal to the Ontario Drainage Tribunal. As a result, it was decided that the drain not pass through

our complainant's property. The tribunal also decided that costs should be assessed up to, and including, the hearing of the first appeal according to the original schedule of assessments.

Since our complainant was not one of the original petitioners, and since he derives no benefit from the drain, it is unfair that he should pay any of the costs. However, the tribunal is functus and its decision cannot be changed. The end result is that our complainant has to pay part of the cost of the first appeal and of a drain that was never constructed and which he never wanted.

Another situation exists with several investigations involving the Ontario Human Rights Commission, where the commission has agreed with our conclusions but has found itself functus to implement our recommendations. That is, it is unable to rehear an issue once it has already been reheard. Again, the passage of our proposed amendments would give these agencies the necessary authority to comply.

Expanded jurisdiction: The last unresolved issue concerns my suggestion that the standing committee on the Ombudsman consider whether the jurisdiction of the Ombudsman should be expanded. I am pleased that you are going to consider this issue in the very near future.

1. Expedited case handling: As you know, the investigation of complaints is the essence, the heart, of the role and function of the Ombudsman. That is what it is really all about. My goal is to ensure that our investigations are thorough, impartial and completed as expeditiously as possible. We are constantly monitoring case loads and complaints received to ensure that our organizational design meets current needs. Expedited case handling will always be a priority during my administration.

Although an all-time high of more than 17,000 complaints and requests for assistance were processed last year, I am aware that there is still room for significant improvement in the time it takes for us to complete our investigation. I might say to that that I am entirely satisfied with the competence, the professional manner and the quality of the complaint investigations and of the staff who investigate. I think I have an excellent investigative team. It is just that I want a little more speed. In this regard, three interconnected projects have been proceeding during the course of the last year.

i. Delays outside our control: One concern is our ongoing study of delays outside our control. The focus of this project is to pinpoint those governmental organizations that unreasonably delay in responding to our letters and reports at various stages of our investigation, and then, using this data, to develop strategies to improve the speed with which governmental organizations respond to us, in order to lower our response and reporting times. To date, our data have revealed the following preliminary observations:

On the average, it takes a governmental organization four weeks to respond to our initial notice of intent to investigate, even with prodding. Once a tentative conclusion and recommendation has been forwarded to the ministry or agency for comment, an average of four months is taken by the government agency to respond.

The Ombudsman's final report averages a three-and-a-half-month response time. These figures, of course, vary widely among government agencies, but, as we accumulate more data, we are improving our ability to plan effective

strategies to deal with these delays. Examples of our data will be presented by the executive director, Mrs. Meslin, during our discussion on statistics.

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ii. Kinley report: This report concerns the manner in which we record and handle our complaints and how we report our statistical functions both to the Legislature and to the public. In order to improve complaint handling and the statistical reporting functions of this office, I retained the services of John Kinley, a highly respected research statistician and former director of research for the Ministry of Labour. I had had the opportunity of working with Mr. Kinley for 11 years and I knew his capability. I needed him to take a hard look at how we were amassing statistics and handling them in our office.

I asked him to prepare a report and recommendations on our case handling with the view to presenting to the public, and the Legislature through your committee, data that accurately reflect all the work we perform and how effectively we perform it. Mr. Kinley's report contains many important suggestions for improving our complaint handling and the presentation of statistics in our investigation and outreach work. The following are several of the improvements recommended by Mr. Kinley:

1. A statistical supplement to the annual report to be prepared and released to the standing committee on the Ombudsman prior to its hearings.
2. To ensure consistent practice relating to the definition of a complaint, clearly defined guidelines should be established defining the major common characteristics of a complaint.
3. Complaint-based statistics will be more easily understood and more useful if the current "outside jurisdiction" category is revised to better reflect the services associated with it. Those complaints not directed against provincial government agencies should be classified as inquiries and counted with information requests. Those directed against provincial agencies should continue to be classified as complaints and subjected to more penetrating analysis.
4. Statistics should be developed that show the movement of jurisdictional complaints through the key stages of the formal case handling procedure, including an explanation of the work done to reach each of these stages, so that the public and this committee would have a better understanding of the scope of our investigative work.
5. Complaint handling delays should be more critically analysed by examining the time taken at each stage of the investigative procedure.
6. An analysis be made of the causes of growth in the numbers of nonjurisdictional complaints; why they happen.
7. The annual report should contain more comprehensive explanatory notes of the tables showing complaint disposition by jurisdiction and those showing jurisdictional complaints by type of disposition.

There is a lot more in the Kinley report, but those are some of the highlights and I thought they were extremely helpful to us.

Expedited case handling committee: As a result of the Kinley report, I appointed a committee on expedited case handling chaired by the executive

director. This committee consists of staff representatives from all sections of the Office of the Ombudsman, including all assistant directors and the director of investigations. It was struck to examine current practices in the light of the Kinley report, with a view to recommending more efficient and quicker case handling procedures without sacrificing--and I consider this very important--the quality and the integrity of our investigations.

Every aspect of case handling, from intake procedures to file closing, from the deployment of personnel to the use of information systems technology, is under scrutiny and open to recommendation. I consider the expedited case handling committee the most important committee that I have struck since becoming Ombudsman because, as I said earlier, the handling of cases is what it is all about. That is the critical job of this office. The committee has just forwarded its preliminary report to me for my comments. I just got it. An overview of the final report will be included in my next annual report.

Investigative reorganization: Since the time of the publication of my annual report, I have implemented a number of changes in investigative organization of my office. Most important of these is a change in the way we handle complaints from correctional institutions.

As you know, I had five investigative teams--incidentally, you will see them in appendix 2 of the report--labour and psychiatric institutions; social benefits; justice and licensing; land use, resources and revenue; and corrections, which was devoted exclusively to institutional investigations. However, I was not satisfied that we were handling the multitude of complaints from correctional institutions effectively and efficiently. In consultation with senior staff, I decided to change the structure of this group entirely.

First, I assigned the responsibility for accepting and screening correctional complaints to a special unit in the intake and information area. The necessity for such a unit was compounded by the decision of the Ministry of Correctional Services to provide telephones for the use of the inmates in most institutions in the province. This increased the number of telephone contacts with our office, related to corrections, to literally hundreds of calls per month, whereas previously most of our institutional communications had been by letter.

Since inmates now have a better opportunity to discuss their complaints by telephone, I have also changed the way in which the investigators deal with correctional complaints. Instead of making regular visits to all of the institutions, they now visit to investigate serious complaints from inmates, in much the same way that investigations are carried out in other areas. Complaints which can be handled through telephone inquiries and with the help of institutional staff no longer automatically require a visit from one of our investigators. Our regional staff members often assist investigators by obtaining information from institutions in their areas.

Under this revised procedure we have received excellent co-operation from most of the institutions in resolving complaints informally where possible. To explain our new process to the institution and to allow new staff now involved in these investigations to become acquainted with institutional personnel, each of our assistant directors will visit all the institutions in their assigned areas. I have personally visited four provincial institutions during the past year and I will continue this practice in the coming year. My next visit, shortly, will be to Whitby.

It is my hope that this reorganization will provide rapid solutions to

many of the institutional complaints, while also providing expert investigations into those complaints which require a more formal approach.

Staff morale: Maintaining a high level of staff morale is a major management responsibility and it is not always easy. In this regard, I believe the Ombudsman should be exemplary by ensuring our employees the right to grieve and providing them with a structured forum where employee concerns can be expressed.

Grievance procedure: I am pleased to report that we became the first and only Canadian Ombudsman's office to adopt a formal grievance procedure for our employees when I signed our employee grievance procedure document last October. A copy of this procedure is attached in appendix 2.

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This document was created by the efforts of a joint management-employee committee which included elected staff representatives. We have had three grievances so far. On the few occasions the procedure has been implemented, the results have proved very satisfactory to all concerned. We have not had to go to an arbitrator. We have been able to solve it within our own office.

Joint employee relations committee: After our grievance procedure was put in place, a joint employee relations committee was struck to serve as a structured forum for employee concerns. This committee, comprised of elected staff members and management representatives, make representations to me about issues of general interest or concern to staff: for example, occupational health and safety matters such as air quality in the building and general policy matters such as the availability of part-time staff positions are being discussed by the committee and recommendations for change, if necessary, will then be made to me.

French-language services: Another issue that I consider a high priority is the provision of services in the French language. I feel that the Office of the Ombudsman must lead the way in serving the needs of the public.

I am aware we may be called upon after November 18, 1989, the date the French Language Services Act comes into full force, to investigate omissions in French-language service delivery by any provincial government agency. Therefore, I established a committee to advise me how best to meet the requirements of the act in providing services to the public in both official languages.

This committee has proposed a plan which I am currently implementing. The main components consist of the addition of a toll-free 1-800 line for service delivery in French across the province; the hiring of several bilingual staff members to fill positions handling inquiries, complaints and legal advice; and the gradual improvement of the office's internal and external information systems, including everything from our word processing systems to our audio-visual materials.

This will be in addition to an already substantial level of service. At this time, where the information request or complaint is originally registered in French, the office responds in French and, if requested, French-language services are provided throughout the term of the investigation by a bilingual staff member.

I am also pleased that whenever someone comes into the office speaking

Croatian, Italian, Yugoslavian or whatever, we have someone there to talk to them. Office-wide, we now have 12 bilingual staff members. Intake, referral and public education services are currently available through bilingual staff in the Ottawa, North Bay and Timmins district locations. General brochures are printed in both official languages, as is the annual report.

Provincial Auditor's report: Before I conclude my sort of lengthy remarks I take pride in reporting to you that for the third consecutive year the Provincial Auditor's report on this office has given us a clean bill of health. The auditor's covering letter stated as follows: "Our review of the Office of the Ombudsman's system of internal control and accounting procedures did not disclose any matters of significance to be reported on at this time." It is an interesting way to describe it.

Mr. Philip: But we'll keep looking.

Dr. Hill: I know. That is what I am worried about.

I would like to publicly thank my staff for their co-operation in maintaining good fiscal management.

Conclusion: Members of the standing committee, this year marks the 40th anniversary of the adoption of the United Nations Universal Declaration of Human Rights, and it also marks the 13th year of existence of the Office of the Ombudsman as an authentic agent for justice and fairness for all Ontarians.

As I proceed into my final year, and this is it, as Ombudsman, I hope to leave a healthy, vital organization to my successor. I am confident this committee will continue its excellent record of assisting my office in its mandate to protect the right of all Ontarians to fair treatment from their government. I look forward to working with you to achieve this goal.

Madam Chairman: Thank you, Dr. Hill. We appreciate your taking the time to outline both your remarks from your annual report and updating us on anything that has occurred since you tabled the report last June.

I would like to ask for questions from the committee. Mr. Philip, you were first.

Dr. Hill: May I get a coffee first?

Madam Chairman: I can just imagine why. The 55 pages have dried your throat.

Mr. Philip: I can tell you that if you read 55 pages of petitions, it does the same thing to you.

Madam Chairman: Listening to it does it to our ears.

Mr. Philip: Maybe it will have some effect on somebody.

On page 10 of your report, 1986-87, you talked about the very deplorable conditions of the Whitby Jail. Then, in this report of April 20, 1988, a year later, you talk about the problems in the jails, the correctional system, and mention that you are planning on going again to Whitby. What has happened in a year's time from your office to correct what you considered over a year ago to be an alarming condition?

Dr. Hill: I have not visited Whitby yet. The one you might be referring to is the Barrie Jail. I did visit it. Whitby was visited by my staff, who showed quite grave concerns that conditions were deplorable. I am going there to find out and to follow up. I hear things are a bit better; I am not sure. I am slated to go there within 10 days to follow up on the comments by my staff to see if anything has appreciably improved. I do not know.

Mr. Philip: Your words are quite alarming. On page 10, you talk about the various other institutions and then you single out Whitby. You say, "I am particularly alarmed at the situation at the Whitby Jail where my staff advise me that despite an increase in operational capacity in the last few years, inmates are regularly confined three to a cell which was originally constructed to house one inmate."

One can assume, without very much knowledge of psychology, that if you put people in those conditions, particularly some of the people who have had perhaps some violence in their past and may be in there for acts of violence, you are just playing around with fire. You are creating a hazard both to the inmates and also to the jail personnel.

I wonder if you or your staff can comment on what action, if any, has taken place as a result of your initial report, which was quite alarming about the situation at Whitby.

Dr. Hill: This is being checked on in about 10 or 12 days, but I understand that the administration has changed--I am not positive; I can ask Ms. Morrison. I also understand that the conditions may not have changed and I will be checking up on this very shortly. Have you heard anything new on Whitby, before I go out there again?

Ms. Morrison: I have not, Dr. Hill.

Dr. Hill: I received alarming reports from my staff. I have not received any reports that things have improved except that the administration has changed. That might be a move towards betterment. I do not know yet and I will not know until I go out there and see for myself again.

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Mr. Philip: It seems to me that you can have the most enlightened administration, but if that administration still has to put three inmates to a cell, the fact that they are getting TV in their overcrowded conditions is not going to change the overcrowding, the conditions.

Dr. Hill: I know of no formal steps being taken yet to change that situation. As I said, I will not know until I go out and see, but, as instructed by my staff, I know of no formal steps yet that have changed that situation.

Mr. Philip: I know that I get constant complaints, less from the inmates and more from the staff of jails, that the overcrowding in their opinion is creating not only security problems from the point of view of security to the public--

Dr. Hill: On several occasions when I have gone to other jails, I have written to the deputy minister and the minister stating that I have visited certain jails and that I was not happy with the number of people kept in retaining cells. I will continue to do so and I will continue to point

these matters out, as I see them, to the appropriate authorities. I guess the best I can do is to continue to point them out, report them and continue to write about them in my annual reports.

Mr. Philip: Both you and the Provincial Auditor have in the past turned out special reports on matters that you consider to have systemic problems. The Ombudsman has done a very interesting one on the follow-up to mental health facilities, which our committee will be writing a report on, and you have done one on the Workers' Compensation Board, just as an example.

Is it your opinion that perhaps the jail system in Ontario would merit that kind of systemic analysis, with a special report to the committee and to the Legislature on what is happening, in the light of some of the alarming language you use in your 1986-87 report?

Dr. Hill: In light of the situation at Barrie and in light of the situation at Whitby and perhaps a few other places, I think our plate is pretty full, but I think there is justification. If I could, I would do another systemic report on that situation, yes. I cannot say I can do it right now because I am up to my neck, but I do think it is warranted, yes.

Mr. Philip: Do you feel it is something that may be done during your tenure or is it something that you pass on to the next Ombudsman?

Dr. Hill: My tenure is running out. When I do a report, I want to see it finished while I am there and be able to speak to it and write to it. As you know, my tenure is running out and I do not know whether the next Ombudsman would want to tackle that. That is something I just do not know.

Mr. Philip: That may be something the committee may want to recommend in its report, that the next Ombudsman look at the possibility of turning one out. Simply picking a jail here and a jail there, I think, is a patchwork method. I prefer, and I think the legislative reform process says that maybe it makes more sense to study certain areas in depth and see where the patterns are than simply reporting piecemeal on---

Dr. Hill: I certainly have been a believer, as you well know, in systemic investigations and I have done a number of them. I cannot perhaps do more, as I said, because of my time period, but I certainly would recommend to the next Ombudsman any other systemic reports I feel are warranted, and so could the committee.

Mr. Philip: On page 13, your comment in the top paragraph puzzles me. My understanding is that you already have the authority you are suggesting; that is, considering a procedure whereby you would proceed with investigations on your own motion on behalf of persons who are unable to communicate or give--

Dr. Hill: You are looking at my remarks now.

Mr. Philip: Yes. I am not quite sure what kind of procedure you are suggesting that you are not already involved in and that you have not already done in the past. What does this add to what you have already been successfully doing?

Dr. Hill: Mrs. Meslin, do you want to say a word to that?

Mrs. Meslin: There is no doubt that the Ombudsman can do investigations on his own motion.

Dr. Hill: It is in the law.

Mrs. Meslin: What he is trying to point out here is that in the context of people who have particular disabilities where they cannot write down what is needed to make a complaint, we should find some way to facilitate those complaints whether it be through own motion or not. There are some legal problems about deciding that you are going to take a complaint that you cannot hear from someone specifically, but that a third party has given to you in the name of that person who cannot speak for himself. What we are suggesting here is that the ability to do own-motion complaints may be the vehicle the Ombudsman could utilize in handling complaints of that type. We are not talking about own motion as if they did not exist.

Mr. Philip: I guess I am confused because it seems to me you have already done that. You did that in the case of nursing homes, as I recall, in the past.

Mrs. Meslin: But we had complainants who wished to remain anonymous, so we did own-motion complaints in an effort to protect those people. This is not the same situation with a disabled person who cannot speak or see or hear, but whose friend or hospital staff person says there is something affecting that person, which if he could speak, he would complain about.

The difficulty is that you cannot ordinarily take a complaint from the other person if it does not personally affect him or her. If it is a nurse, let us say, it does not personally affect him or her. We are looking at the vehicle of the Ombudsman's ability to institute an own-motion complaint to speak for that person, and we are suggesting it.

Mr. Philip: In the case of your nursing home investigation, is that not what you did? You did do an investigation on nursing homes.

Mrs. Meslin: Yes, but we had complaints from people who did not want their names used and who could not be the complainants.

Mr. Philip: Ok. So if it was not from--

Dr. Hill: These people are totally incapable--

Mr. Philip: --relatives exclusively then; it was from people in the nursing home.

Mrs. Meslin: That is right.

Mr. Philip: Okay.

Dr. Hill: We are getting this from our special investigator to the disabled, who said there are people who just cannot say anything for themselves at all. You have to do it on your own.

Mr. Philip: I want to ask a question of you from the point of view of policy, and let me lead into it in this way: There was an interesting statement in the Labour Party platform, 1964, concerning the Ombudsman that said that the Ombudsman should comment "on those also where the law has been

kept, where all the authorities have behaved correctly, yet the result is absurd and unjust."

Dr. Karl Friedmann, in his paper to the last international convention of ombudsmen, commented that, "Criticism should be directed to parliament and government with a request to change a law where the law is obviously wrong or unjust or where a regulation needs to be changed."

One of the concerns right now of the standing committee on regulations and private bills, and indeed of the literature on regulations, is that there are a number of regulations being made by public servants without the knowledge of the minister in many cases, and certainly without the authorization of parliament. These regulations can have a major effect on people.

I am wondering if you feel it is your responsibility in instances where a regulation or an act is obviously unfair--either it is unconstitutional, in your opinion, a violation of the charter or whatever--to bring in a report, not just to the minister but also to the Legislature via this committee, and through a report suggest that the committee and the Legislature change that particular law or regulation.

Dr. Hill: I would think so. I have just currently asked--I got that report from the regulations committee, incidentally, just very recently and I have asked our general counsel to take a very hard look at that and how it affects the Ombudsman. I just got the report from Michael Zacks discussing how that committee's report affects what we are doing. One of the things I saw very quickly was that the Ombudsman, and any other agency, should have input as to what is going to be changed and why it is going to be changed, and should be requested to make a position paper on that or to state something in relation to that regulation. That is very important. I do not think that has been done in the past. Yes, I would say that I would agree with that.

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Mrs. Meslin: Can I just make one comment as a reminder. I am sure you are aware that we cannot investigate complaints against legislation, and regulations are legislation or are in support of legislation.

Mr. Philip: But if I heard Dr. Hill correctly, he does see that it would be within your jurisdiction and would be entirely appropriate for him not to find that the agency was wrong, but to say, "It acted according to the law or the regulation, but we find this regulation is one that should be looked at and perhaps changed."

Dr. Hill: It has a detrimental effect.

Mr. Philip: You suggested that perhaps you should be able to see the regulations. The committee is dealing with the whole problem of notice and comment; that is, whether or not, before a regulation is printed or comes into effect, the person who is going to be affected, and indeed other interested parties, should at least have an opportunity of receiving a notice and be able to make a written comment. Do you feel that is reasonable?

Dr. Hill: It is absolutely reasonable, absolutely fair. It really does coincide--I am sure this is what Michael Zacks, our counsel, is saying. This is how the Ombudsman functions; absolutely. I think this is a question of

fairness. It is going to affect them and I think they should have every right to opine on that matter. There is no question about it in my view.

Mr. Lupusella: With great respect, I understand the involvement your office would like to take in this particular field, but do you not think that you would take away the power of the standing committee on regulations and private bills to review the particular policy that is incorporated under rules and regulations. Why should the Office of the Ombudsman do what the committee has to do?

Dr. Hill: I am not taking away from what the committee has to do. I am saying that if it is going to affect the workings of the Ombudsman and the functions of the Ombudsman, the Ombudsman should have a right to express an opinion.

Mr. Lupusella: But that is the function of the regulations committee, to review the policy of the regulations that will derive from the legislation. On that review, we as a committee would be able to find out whether or not the policy is in the best interests of the public, against or whatever, so why do you want to take over that function?

Dr. Hill: No, I do not want to take over that function. I think the committee has that power and it has to be respected. It is a legislative committee. I would think, as a courtesy only, the committee would want to know how the Ombudsman or some other agency feels, to get an opinion on it. They may find out something new. I am just saying they should at least have some consultation. The Ombudsman has no power, nor should he, and he realizes that and recognizes that. But I think out of courtesy, he should at least be asked how he feels about it.

Mr. Lupusella: As I understand you, you want to be part of the process of the notice aspect when the policy goes to the public for comments.

Dr. Hill: Yes, and if it goes to the heart of the operation of the office, I think just as a courtesy, we should have an opportunity to say something about it; that is all.

Mr. Lupusella: Notice and comment.

Dr. Hill: Yes.

Mr. Philip: I think one of the problems the regulations committee has recognized is that, one, it is not reviewing regulations, and two, it is physically impossible to review all regulations since there are hundreds of them. What is useful through notice and comment is for somebody who is going to be affected by it, or indeed somebody like yourself, to flag a particular regulation and say: "I think you are going to have a charter problem with this regulation. It violates somebody's rights in some way."

I get the impression you feel that perhaps a general review by your counsel to at least flag to the committee which regulations it might take a second look at would be worth while.

Dr. Hill: That is exactly what we are doing with that report right now.

Mr. Philip: Let me give you a very concrete example of how your office has dealt with one problem, and I will not mention the particular names

or anything. May I suggest it would be the kind of thing where I expect you might have suggested in the report somewhere that the particular regulation be changed.

I am talking about the Assessment Act. I brought to you the problem of a condominium in the riding south of me that receives, under the Assessment Act, 15 days' notice for an appeal. Under present-day realities, no condominium can pull together a meeting in 15 days or get the authority. Appeals can be expensive and most of these large condominiums hire a consulting firm to do an assessment. I think your recommendation to that condominium was to go to its MPP and perhaps try to get a private member's bill or the regulation changed graphically. As a matter of fact, you suggested they go to Dr. Henderson, whose riding the particular condominium is in, and ask him to get it changed, and he is coming on cue.

Do you not feel that perhaps that is the kind of situation where instead of simply telling them to go to their own MPP, you might put in your report the suggestion that the regulation does not make sense and that perhaps the government should change the regulation?

Dr. Hill: Ms. Morrison has a comment to make on that.

Ms. Morrison: It may matter whether there has been a decision taken in accordance with that regulation. If the complaint is just that they do not like the regulation, we do not have jurisdiction over that complaint. If, on the other hand, they come to us and say, "We have had a decision," so that it is a jurisdictional complaint, we can then find that decision was taken in accordance with regulations which were unreasonable, but we do not have jurisdiction to just address regulations in general.

Mr. Philip: What I am saying is that in that case, rather than simply tell them to go to Dr. Henderson or myself and get a change in the regulations, it might also make sense if somewhere in your report you stated: "We came to a problem with the Assessment Act. It makes no sense at this present time for condominiums, unlike private home owners, to have only a 15-day time in which to launch an appeal and the government should consider lengthening it."

Ms. Morrison: We often do recommend changes in legislation if the decision we are investigating has been taken in accordance with legislation we feel is unreasonable. If people come to us with a decision, there is no problem, but sometimes people come to us and say, "I do not like that provision in the legislation," even though we have not really had a situation where we have tried to appeal." In that case, we are not legally in a position to investigate.

Mr. Philip: I do not want to prolong it. You can take a look at the case. Their complaint was not that they did not like the decision, but that their rights could not be exercised because 15 days was not enough time. I am just suggesting to you that rather than telling them to go see Dr. Henderson to change that regulation, it might have been worth while in cases like that--I am sure there are others out there--to suggest in your report that the regulation be looked at from a practical--

Dr. Hill: What you are saying is more constructive advice could have been at the bottom of that letter, and in many cases--I think Ms. Morrison has

mentioned it--we have advised and given more constructive advice at the end of a letter relating to matters of this nature.

Mr. Philip: I know that Dr. Henderson and I will be working to change that regulation on behalf of the people at Islington 2000, but none the less, it would help us if you did include it in the report.

Dr. Hill: That is not unreasonable.

Mr. Carrothers: Dr. Hill, just to clarify in my mind your suggestion, I am not quite clear what you are suggesting in terms of involvement in the notice and comment on regulations. Are you wanting to be involved in the notice and comment of all regulations or just those that specifically are under the Ombudsman Act?

Dr. Hill: I just got this information. Again, I have not read my counsel's remarks on it thoroughly, but I certainly would like to be involved in those that relate to the Ombudsman.

Mr. Carrothers: Regulations can be as minor as changing the amount of compensation on white lima beans under the Crop Insurance Act (Ontario) to a major policy decision.

Dr. Hill: I would have to quadruple my staff to do that.

Mr. Carrothers: You would have to do more than that, I think.

Dr. Hill: I could not possibly do it.

Mr. Carrothers: When major regulations are passed--for instance, the trust corporations legislation just came in. There was a regulation passed and there was notice and comment by the department. There seems to be a process now where there is fairly wide comment sought when a major regulation goes through. I am just wondering if adding your office into every regulation would be producing a process which is even more cumbersome than it is at present.

1130

Dr. Hill: We are not asking that.

Mr. Carrothers: I guess I do not know how you decide going into a regulation which one would affect--I can understand what was just mentioned about the ability to comment on changing one after the fact, but being part of the notice and comment, with literally thousands of these things flowing in the system--

Dr. Hill: I know. There is a point at which you have to be practical about these things.

Mr. Philip: One last question arising out of Mr. Carrothers's comments: Would you not agree that if there were a proper indexing system of regulations so that your counsel could at least go through the index of what is coming up, you could be selective and pick those things that you feel might be a violation of the charter and might involve some human rights problem, and through being able to comment on it, possibly change it so that you do not have the extra case work at the other end when somebody then is grieving as a result of an unreasonable regulation?

Dr. Hill: Would that indexing be a horrendous job?

Mr. Philip: It is being proposed. It certainly is one of the proposals being looked at.

Dr. Hill: I just do not see how we could handle it, that is what I am trying to say; whether we should indeed get into it.

Mr. Philip: I am not suggesting that you do the indexing. I am suggesting that there be an indexing system.

Dr. Hill: No, I know; that we look at it.

Mr. Philip: In a computerized world that is possible, and it is done in other jurisdictions.

Dr. Hill: I will certainly keep the suggestions in mind, but I would like to know what affects us at the first level.

Mr. Pollock: I would like to know if you have ever had any complaints in regard to handicapped people, say, from rural areas. I represent a large rural area. There is not public transportation even for individuals, let alone the handicapped. Do you have a lot of complaints from people like that in the rural areas?

Dr. Hill: I do not know, but I can tell you one thing, I can ask Carole Eldridge, the person who is working full-time on that. If you want to know what complaints we get or the standard of complaints we get from rural areas, I can find that out and tell it to you. I just do not know. I do not have it broken down by municipalities, rural areas and things like that yet. She is still a fairly new investigator, but she has a variety of complaints. I can ask her and find out the extent to which we do get rural complaints. I do not have it at the tip of my fingertips. Can you remember that, Gail?

Mr. Pollock: OK, one other thing: It is my understanding that your office is supposed to investigate any concerns of individuals in regard to their dealings with ministries. That is basically the function of your office.

Dr. Hill: Right.

Mr. Pollock: You do not have any jurisdiction over a situation that would be considered once removed. What I am coming at is that if a ministry commissioned a study on a certain situation and a consultant's report came in--as far as I am concerned, and I am talking about one situation, I regard that consultant's report as a joke. It was a way out.

We all know that whoever pays the piper calls the tune. In other words, as far as I am concerned, the report was written up to more or less blend in with what the ministry wanted to do in the first place. There was X number of dollars spent on the report, and as far as I am concerned, as I said, it was a joke.

You have no jurisdiction over that?

Dr. Hill: It depends on what the situation is and what is involved. Gail, do you want to comment on our legal involvement?

Ms. Morrison: We would have jurisdiction over a decision of the

ministry that affected someone in his personal capacity. If someone, for example, came to us and said, "I don't like the ministry's decision"--taken in accordance with that consultant's report--"that affects me," we could investigate that. That investigation would include looking at the consultant's report to see whether the ministry's decision based on that report was reasonable.

What we could not do is investigate just, for example, the ministry's decision to get a consultant, because that is not something where someone is going to come to us and say, "That personally affected me."

Dr. Hill: It really has to affect somebody personally. We could not investigate just the report itself, or the fact that it may be a nonsense report. We could not say anything about that unless it directly affected the life of somebody.

Mr. Pollock: It does to a point, but really, I think there is a grey area there.

Dr. Hill: Right. We would look at the grey area, yes.

Mr. Pollock: But anyway, as I mentioned before, this particular report, I think, was more or less drawn up, given totally to support the ministry's ideas.

Dr. Hill: I see.

Mr. Pollock: So really I question why one should even spend the money on the report in the first place. Anyway, that is basically what I wanted to say.

Dr. Hill: I used to be a consultant years ago and I know what you are talking about.

Mr. McLean: On page 31, on the drainage tribunal, do you get many complaints under the drainage tribunal?

Dr. Hill: Yes.

Ms. Morrison: Yes, we do.

Mr. McLean: Can you enlighten me in how many of them you have changed or you have helped change the award, or if there have been awards?

Ms. Morrison: I probably cannot give you the statistics on how many supported cases we have had under the Drainage Act, but the first thing we do is explain to people what the process is. A lot of people complain about decisions under the Drainage Act, because the process is a very complicated one and they do not really understand how it is supposed to work.

In cases like this one we are stuck, because even though we can support the complaint, if we cannot do anything for them, it is useless. I think the Drainage Act is one of the toughest places for that particular kind of problem to arise, because the tribunal is functus. Once the decision is made, we cannot get the decision changed, and therefore, although we might support the complaint in principle, we cannot actually do anything for people.

Mr. McLean: So once the engineer makes his awards and has done his

assessment, there is really nothing that you can change. So in the number of complaints you have had, then, you are saying that there has been nothing. You have looked at the complaint and you have more or less sympathized with the people, but you cannot really do anything.

Ms. Morrison: It depends. Not all the complaints will deal with a decision of the drainage tribunal. Some of the complaints will deal with the way, say, the engineering decisions were taken or information which was not given to people. Those kinds of complaints we can do something about. It is just when there is an actual decision of the tribunal that we are in the situation where we cannot assist.

Mr. Pollock: Excuse me. Just a supplementary there to what Mr. McLean asked. When the engineer makes his report, is that the time the person should act, not after the tribunal has made its decision?

Ms. Morrison: The problem is that we are stuck on that, because we have no jurisdiction until people have taken their last appeal, which is the drainage tribunal. Until they have done that, we cannot get involved; and once they have done it, we cannot do anything. That is why this amendment is so important.

Dr. Hill: The amendment would cure that.

Mr. McLean: I want to thank you for that, because I have a problem in that area and I thought the last resort would be to refer them to you. However, I observe now that probably it may be a waste of time, because the ditch is there and some people are not satisfied. It has gone to the courts and it is through the final stages, so I presume it is settled.

The other area I would like to ask you a couple of questions on is referred to at page 47 with regard to the complaints that you get from prisoners. What number of complaints have you had on which you have actually been able to do something? Are they complaining about the health, sanitary or accommodation situation? How can you change that situation other than to recommend that there should be a new jail in Barrie? I have known that for 30 years.

Dr. Hill: Mr. McLean, to a prisoner, everything, even the loo, the smallest thing is magnified, because once you are in prison, everything becomes a major, major issue: cold toast, cold tea, television, things that we on the outside would not consider a major matter. Just about all those complaints we have been able to handle. The big things like overcrowding: that is the issue. The overcrowding problems in Barrie and Whitby are things we have to battle over with the Ministry of Correctional Services and the government. New jails have to be built, there is no question about it.

Mr. McLean: Do you get most of your complaints from people who have been sentenced or from people who are there waiting for their trial to be held and to be sentenced? In which area do you get the most complaints?

Ms. Morrison: We get complaints from both kinds.

Dr. Hill: There is some brutality. I think we have brought one before you involving the correctional officers really beating up someone. You get that sort of thing, not a lot. A lot of them are complaints that we would not consider major but they consider major because they are in jail. We do something about those fast.

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Mr. McLean: Do you get many complaints from the Oak Ridge division of the Penetanguishene Mental Health Centre?

Dr. Hill: We have been to Penetanguishene. Yes, we do. We have worked with them, and I went up myself to Penetanguishene. I do not know the extent of them. Do you have any idea?

Ms. Morrison: We have complaints from them.

Dr. Hill: There are a number of complaints. They come in regularly.

Mr. McLean: I have had complaints from there myself. I have gone there, I have toured it. I have investigated it, and I have sat down with the doctors, professionals and the residents. I have found out that most of the complaints have been looked after by the staff.

Dr. Hill: We went up there. I spent a whole day up there talking to the top people. We had co-operation and we have been able to rectify--they are getting a lot of bad press all over the place, but we go up there and work our way and do what we can with those complaints.

Mr. McLean: We need a new facility, and my understanding is that the minister has committed that. It is just a matter now of announcing the time when it will start.

Dr. Hill: I think we can say--I have to check with my counsel over here--that when we have gone to Penetanguishene we had co-operation in every way from the officials in handling the complaint that we had to deal with. With regard to the whole system, that is something else; we have not been able to deal with it. But the complaints, yes, we deal with them.

Mr. McLean: The other area that I want to zero in on, and I think it is the most important one, is with regard to the length of time that it takes, once you have resolved the complaint or looked at it, for action to be taken by the ministries to make sure that what has been recommended is done. I do not see where you have indicated in your remarks that perhaps there should be some amendments to the Ombudsman Act to strengthen that area. I am wondering what your comment would be on that main area, where you and the committee have made the recommendations and are sitting back waiting for some action to be taken.

The indications I have are that if the ministry really does not want to act, it does not. It just keeps putting it off. It will refer it and it will talk. I have not seen anything in your report where you say this area has to be strengthened, there has to be amendment to the act.

Mrs. Meslin: I would just like to make a comment briefly. I do not recall if you were here when we were discussing one of the issues like that last time we were here. Since it is a standing committee now, one of the most important things that this committee might be able to do, instead of waiting year to year to have these ministry people back, is to make them come back on a regular basis until they do it. If they know that this committee will not trouble them again for another year, they can sit on it. If they know that this committee, at each meeting, is going to demand that more senior people come here and account for not doing what the committee has recommended, you might get some better results.

Mr. McLean: I have one last question, with regard to your services delivery in French, and that is referred to on page 52, where you indicate that perhaps in 1989 you may have a lot of extra work to do when the French Language Services Act comes into full force. What are you anticipating with regard to the various ministries in implementing it? My understanding now is that each ministry has a designated French-service section, and I am sure it is being implemented according to the act. What do you anticipate your involvement will be in the ministries?

Ms. Morrison: I think we are anticipating that members of the public, however good the service given by the ministry in French may be, may still find some reason to complain. All Dr. Hill is suggesting there is that it is a jurisdictional complaint to our office from a member of the public that they are not being provided with appropriate services in French. I think all of the ministries will be trying very hard to provide appropriate services, but it is our experience that we will get complaints anyway, and we will have to look into whether the provision of French services is adequate.

Dr. Hill: We have had only one complaint in the past, just generally speaking, from the public.

Mr. McLean: Do you have a breakdown of your complaints in your last report?

Ms. Morrison: As against which ministries?

Mr. McLean: For the previous year. Yes.

Ms. Morrison: Yes.

Dr. Hill: Yes.

Mr. McLean: That is in the report, is it? I have no further questions.

Mr. Elliot: I would like to refer to the comments made with respect to the special project officer on pages 10 and 11, relative to the developmentally handicapped community in Ontario and the decision back in October 1987 to extend that project to all disabled Ontarians. My concern is with respect to the quality of care provided because in dealing with this community and my riding, I find that a large part of the delivery of the services is the responsibility of the region.

With respect to special complaints that are made to me, the first thing I do is find out in other jurisdictions is what is being done to see if the level of service in our community is somewhat the same. I have only been at this six or seven months, but I am already finding out there is a wide divergence, because I am in north Halton with the south of Halton, and there is a wide divergence in other municipalities like Hamilton, Oshawa and Metropolitan Toronto with respect to what my clients can obtain. It is Ontario money that is being provided but it is at least once, and sometimes twice removed from the Ontario government.

I am wondering, with respect to your office, what sort of assistance that I, as a member of your office, might provide to complainants in my riding of Halton North who are disabled?

Dr. Hill: How about education? Educational?

Mrs. Meslin: It may well be, first, that our special projects officer might be able to be of assistance by coming into your constituency, speaking to some of these particular people to explain what is available and what we can do in those areas where we have jurisdiction. Even in the areas where we do not have jurisdiction, we can assist those people with proper referrals and put them in contact with various agencies or even self-help groups. It is often that most of those organizations or particular individuals do not know where to go. They come to the MPP and there are no vehicles around to assist.

What we have tried to do is assist in putting those people on to where they have to go, making sure that if their complaints are understood and we can handle them, we take them and we do them immediately. Perhaps our project officer could come out and discuss it with you and with the community.

Dr. Hill: And provide a list of resources. I think we have a very compact list of resources in Ontario of who can handle what in terms of the disabled. When our project officer goes out she generally goes out with that kind of material that is helpful. It is really primarily an educational thing for us to work with the disabled community in that sense, wherever it is, and she goes across the province doing that.

Mr. Elliot: As supplementary information, we have had a very active disabled person named Pat Wood in Georgetown who has established in her own home a data bank over the last five or six years. I believe the Office for Disabled Persons is going to be giving a grant to get that all computerized and then it would be available as part of the information service that is already available. Really the problem is that we have X number of clients who just are not being served according to the guidelines provincially with respect to accessibility and other things like in housing.

I think everybody has the same problem. We have waiting lists all over the province. But as you compare our waiting lists to waiting lists in other areas, they seem to be quite a bit longer. I am just wondering if the Office of the Ombudsman has a role in that or whether it is a fight with the various ministries that are involved through my office.

Dr. Hill: I would like to put our person in touch with your contact person on that then, if you do not mind. Carole Eldridge has been working in this area for a number of years, and we will see what we can do with them.

Mr. Elliot: Good.

Dr. Hill: We can do that. We will note that. I do not know who you want us to speak to, but I would like to put her in touch with that person.

Mr. Elliot: My final comment on this is I am really speaking for areas like mine that are in rural Ontario, because I think all the members from rural Ontario are finding, as we compare the level or quality of care in rural Ontario to the builtup areas, that it is not there. Realizing that there is a limited resource, it cannot be had 100 per cent on a demand basis either. If somebody has the service in a builtup area and chooses to move to a rural area, I do not think instantaneously he can expect to be served as he was in the builtup area. I think there is a wide divergence there right now that we have to address as a government.

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Mr. Lupusella: In the course of your presentation, you made particular reference to a report presented before the Workers' Compensation Board on psychotraumatic disability entitlement decisions. I am wondering if the thrust of your report was strictly based on the argument of the board's medical reports versus the claimants' medical reports, or if you made reference to a wide-spectrum, decision-making process on the degree of disability, how the disability is assessed, whatever. What was it all about?

Dr. Hill: We can answer that but we have the report available for you.

Ms. Morrison: It was a general review of decisions and problems relating to decisions by the board concerning psychotraumatic disabilities. It was not just a question of board doctors versus other doctors, but a general review of decisions that we had had complaints about, and the general process the board has in dealing with that kind of complaint. I think the clerk of the committee has a copy of the report if you would like to look at it.

Mr. Lupusella: Did you attach the degree of disability given on this particular aspect of disability?

Ms. Morrison: Essentially what we were looking at was how the board dealt with these kinds of complaints compared with the way it deals with other kinds of complaints. Some concerns had been raised with our office about the inconsistency in decisions relating to psychotraumatic disabilities compared to the way the board dealt with other kinds of disabilities. I think the report to the board really addresses some of the problems that have been raised in the past in the hope that they will be resolved.

Mr. Lupusella: The reason I am raising this issue is that the board in the past used the practice of assessing a particular disability based on five per cent to 10 per cent for a period of one year or two years. It appears that this practice is constant and never changes. I am just wondering if in your report, you elaborated on the severity of this disability, which most of the time is triggered by the accident. The thing that bothers me is the constant formula used by the board, which is in the range of five to 10 per cent for a year or two years, and then it is reviewed again. Then the pattern is going to start all over again, five per cent, 10 per cent for another year or two years.

There is something that appears not to be fair in the way this kind of disability is assessed by the board. Besides, the particular aspect, which was well put in your report, of the board's medical reports versus the claimants' medical reports, I think is well taken.

Ms. Morrison: I think you might find having a look at the report helpful with respect to those problems.

Mr. Lupusella: OK. Thank you.

Madam Chairman: We will hear from Mr. Bossy and then I suggest we adjourn for the day.

Mr. Bossy: I was very interested in your remarks, since you have taken over as Ombudsman, concerning your trust in public education as to what

the Office of the Ombudsman is all about, and in seeing that over the last four years it has grown 26 per cent as far as inquiries are concerned.

Looking at the figures of 17,000 applications just in this past year, I am wondering what effects the special week you put on for public education might have had on the type of calls your office might have received that I imagine you would classify as being frivolous complaints. People look for help anywhere. When this real exposure came about, people who were not satisfied--not necessarily strictly with government agencies, I must say here. What percentage of that 17,000 could you define that did not come under, really should not have come under, your jurisdiction, but asked you for help?

Dr. Hill: A very small percentage would be frivolous or vexatious. I do not have a percentage on that.

Mrs. Meslin: There is a large percentage of complaints that come to the office that are nonjurisdictional, as a result of any kind of publicity, because people, when they hear, half listen. "The Ombudsman will handle your complaints against provincial government agencies." That sort of goes away in their minds and what they hear is, "The Ombudsman will handle your complaints against governmental agencies, municipal, federal, whatever."

Many people phone us with a particular problem. One of the services we have been able to offer over the years is that we have been able to put those people on to the correct agencies or whomever. As you know, we have an excellent referral organization and the ombudsmen have always directed the staff to do that with whatever ability we could. What is happening is that we get a lot of those, but we also get a lot of jurisdictional complaints as a result of these public education forays into the province.

Dr. Hill: Especially in the regions. It has just skyrocketed in the Sault Ste. Marie region, for example. Formal complaints or jurisdictional complaints have skyrocketed in places like Windsor and London because of the new settings we have there. This has happened along with all kinds of other complaints that I do not consider frivolous or vexatious. People have real problems, need help and all they know is that it is the Ombudsman.

The problem is that the public does not know the difference between jurisdiction and nonjurisdiction and they do not even care. They do not care whether it is the right jurisdiction or not. They are hurting and they say, "Well, you are the court of last resort; you help us." I say to my staff, "Help them anyhow." We count them in.

Mr. Bossy: Looking at the figures here, again I come back to the public education week we had. I see the figure shown of 300 in Metro. We are talking about the urban versus the rural response that you have had. You find it proportionately. During education week, were you able to draw as much interest from the rural communities as you would have from Metro? We are using Metro as an example. We do that quite often because it shows good figures. But when you went to Windsor or Sault Ste. Marie, what type of response was there?

Dr. Hill: Very high.

Mrs. Meslin: When we quoted a figure of 300 people from Metro coming to the open house, that was not 300 complainants or people from around the Toronto area. What we tried to do was to invite people who are heads of agencies that cover the province. What we had was a great number of people who

deal with people all over, in rural areas, etc., come in here to get literature and start making the link.

One of the outreach tasks for our people out in the community is that they must go into the rural community. They must make contact with all kinds of groups within that community. We have much more success rurally than we have in Toronto in terms of people beginning to understand what is jurisdictional and what is not. When you come to a small meeting of 20 people, it is a lot easier to take your time and explain to them what the Ombudsman does than it is to go to a meeting in Toronto or Hamilton or wherever where there are 500 people, hand out the literature and try to give them a better sense. The educative factor in the rural areas is a lot better than it is in the big areas in terms of jurisdiction.

Mr. Bossy: Personally, in my riding office, we get several complaints about government agencies. To be fair, I have found many of our government agencies people, because of frustration, because they no longer have an answer for a person, do not just say, "Go and see your MPP"; they will say, "As a last resort you have the Ombudsman." I have had that quoted. Our government agencies are trying to be fair in that sense, not just pawning it off on the members alone. Your office, I can see, is being used more, and we are helping that a little.

Madam Chairman: Before we adjourn, I would like to make a correction to something I said earlier. We have decided now that our meeting should commence at 9:30 a.m. next Wednesday and meet with the British delegation between 9:30 and 10:30. That will allow us an hour. For those who can be there at 9:30, please do come at that time. We recognize that our normal sitting time is 10 a.m.

From 10:30 to 12, we will reconvene in another room and continue our committee meeting. At 12 o'clock, the lunch will be held and we will allow a few minutes for people who need to do some things back at their offices.

Dr. Hill: When we reconvene at 10:30, will we be discussing the annual report again?

Madam Chairman: Yes, and if possible, if information can be provided, we can get into the statistics as well.

Mrs. Meslin: I should interrupt because I have been communicating with Ms. Evans. We have been preparing our statistical thing for the meeting on May 4, because I want to get the statistical data to her and to the committee beforehand. I will not have it completed until a week from Friday, which is when I was going to give it to her. It is going to present a bit of a problem.

Madam Chairman: Let us discuss that and see what is needed during that time for our meeting and we will get in touch with committee members with regard to that hour and a half.

Mr. Philip: We have enough material on the Ombudsman's annual report plus his statement today that we have not dealt with; I do not think we are going to have a problem.

Madam Chairman: That was my feeling.

The committee adjourned at 12:04 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1986-87

WEDNESDAY, APRIL 27, 1988

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Carrothers, Douglas A. (Oakville South L)
Charlton, Brian A. (Hamilton Mountain NDP)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
McLean, Allan K. (Simcoe East PC)
Philip, Ed (Etobicoke-Rexdale NDP)
Pollock, Jim (Hastings-Peterborough PC)

Clerk: Decker, Todd

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. Daniel G., Ombudsman
Zacks, Michael, General Counsel
Meslin, Eleanor, Executive Director
Morrison, Gail, Director, Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, April 27, 1988

The committee met at 10:45 a.m. in committee room 1.

ANNUAL REPORT, OMBUDSMAN, 1986-87
(continued)

Madam Chairman: First, if we can, I think we should approve the budget which is before you, just in anticipation of the Board of Internal Economy perhaps reviewing budgets in the next little while. You have it before you. We had scheduled for five weeks, and that is the time to review the Ombudsman's report and to look at expanded jurisdiction.

Included there is the appropriate travel and meal expenses that accompany that, and the travel and accommodation to go to the hearings on expanded jurisdiction, which we agreed would be Ottawa, London, Timmins and Thunder Bay in Ontario and then Winnipeg and New Brunswick outside of Ontario.

Also included in there under travel is the International Ombudsman Conference, which is in Australia in October. We are still awaiting a formal invitation to that, but we put it in the budget as 11 members at \$220 per day for accommodation per member and \$5,000 for travel.

The advertising we agreed on is for the expanded jurisdiction: in all the dailies in English, advertised in English; and the French in French.

Then there are other miscellaneous items, including legal fees. We have inserted 200 hours at \$100 an hour, which is the rate that was approved by the board when it last sat in December.

The total is \$199,500. Any comments or discussion?

Mr. Pollock: When will it be confirmed whether we will be going to Australia or not? We do not have any idea yet.

Madam Chairman: Until we get approval from the board for the money, it is very difficult to confirm it. We have not received any correspondence from the conference people, although I do understand that an invitation will probably be extended. Is that fair, Mrs. Meslin? It is just a matter of whether we get approved, and then we were even suggesting participating in the program, if possible.

Mr. Elliot: What are the exact dates involved? Do you know?

Madam Chairman: It is October 23 to 27. I understand that the Ombudsman's office will be leaving the Wednesday before that, about October 18 or 19. It is 20 or 28 hours of travel, so we really should be leaving quite a few days before the start of it, perhaps five days before.

I do not know if I want to take a vote with just four of us here. Could I have a motion anyway to approve the budget and to allow me to take it to the board as it stands before you?

All those in favour? Opposed?

Motion agreed to.

Madam Chairman: Thank you. I am sorry, it is just that you are so quiet this morning, gentlemen.

Mr. Philip: This is a completely nonpartisan committee that manages to reach consensus on a number of occasions.

Madam Chairman: I am noticing that; quite. Thank you very much, you are being very nice to the chair this morning. I hope laughs do not go into Hansard.

We have our counsel back, as everybody is saying. I must say that we have been carrying on a very intense line of questioning.

Mr. Bell: I read it.

Madam Chairman: Oh, OK. We cannot use the same questions again, is that what you are telling us?

I do believe Dr. Hill had finished his presentation and that we were into questions. I remember Mr. Philip asked to be at the top of the list today because I could not get him on the other day. Other than that, I am afraid I do not recollect where we were in the actual line of questioning. I think we were just sort of jumping around, but we were leaving statistics for next week.

Are you able to take this on? We must adjourn today just before 12 o'clock because we are leaving for a meeting with the British delegation.

1050

Mr. Philip: I wonder if I can just follow up with you because, in anticipation of the British delegation coming, this morning over breakfast I went through the paper done by Dr. Karl Friedmann to the ombudsmen's convention in 1975 on the matter of discretionary decisions by public servants.

I gather, at least at that time--and I want to ask some of the members of Parliament about whether there has been any change--the British act was fairly restrictive about whether or not the ombudsman could comment on the fairness of a discretionary decision. In other words, if the bureaucrat had the right to make a discretionary decision, whether that decision was absolutely absurd or not, then the ombudsman in Britain could not comment on it.

There was a debate at the time and I see that in the Labour Party platform in 1964 they tried to change that. I do not know whether, when they got into power, they actually changed it or not. They have not been in power that often since then. In their platform they said that also where the law has been kept and where all the authorities have behaved correctly, yet the result is absurd or unjust, the ombudsman should have the right to question those kinds of decisions.

Do you see that under your act, which is more flexible, that those are the kinds of decisions that you feel you have the right to question? In other words, where a person has a right to a discretionary decision as a public servant but makes an absurd decision or an unjust decision, do you comment on

that kind of thing?

Dr. Hill: I am asking my general counsel. Have we commented on that?

Mr. Zacks: Probably.

Dr. Hill: I am trying to recall instances, but I think Michael is right. I think we have commented on this. I do not think that has stopped us, but I cannot recall a particular instance.

Mrs. Meslin: I think we would not comment without a complaint to rely on as a basis for that. If an investigation revealed that there was some criticism of it, on the basis of that we would comment.

Mr. Philip: The reason I ask is because it seems to me that somewhere back in ancient history your total argument in one case was, yes, the public servant had the authority to make that decision but it was a bad decision. I am just wondering whether you feel that should be your right, that where the public servant has the authority to make a certain decision but makes the wrong decision, you can comment on the merits of that decision.

Dr. Hill: As I was just saying, we do it all the time. If the complaints are laid, I think it is legitimate and I think we should comment on it.

Mr. Philip: It is interesting because it contrasts apparently to the more limited authority the British Ombudsman has.

Dr. Hill: I had forgotten about that part of the British office.

Mr. Philip: I just thought it would be an interesting point that might be discussed with the delegation.

I wanted to talk about your report, and I refer to page 25. Is there any progress on your apparent problems with the labour board?

Dr. Hill: We think there has been progress. The cases have dropped, of course. We are getting I think excellent co-operation from Dr. Elgie. Oh, pardon me. I am on another thing. I am sorry.

Ontario Labour Relations Board--yes, we are handling the cases. They have made 24 files available to us. So far we have had no difficulty in--

Mr. Zacks: Yes, we--

Dr. Hill: Have we? Something new has popped up that I do not know about. You better let us know. Have they not co-operated with us on some case?

Mr. Zacks: There is always something new and interesting.

Madam Chairman: Hot off the press.

Mr. Zacks: We have a new problem in terms of the type of information we can get. It is a problem between the secrecy provisions in the Labour Relations Act and our access provisions in the Ombudsman Act and which takes precedence. We are in the process of trying to work this out.

Mr. Philip: Can you give me some indication of why is it that--I

have heard their explanation which has been made to me personally--it seems to take so long for them to make a decision over there? The Workers' Compensation Board is bad. I sent a case to you which you people were following up on, in which a labour union has been waiting over two years for a decision as to whether or not they would be certified. Now, common sense tells you that there is a staff turnover in a period of two years, and that works on the side of the employer who does not want the certification.

I am not commenting on the merits of whether they should be certified or not. I do not think that is my role, or indeed your role, but where you have tremendous bureaucracy where they cannot seem to make a decision, it strikes me that that is a major problem. Is it just the one case that I brought to your attention or is there a systemic problem over there in terms of dealing with making decisions?

Mr. Zacks: I am not aware that we have any complaints that deal with undue delay.

Dr. Hill: Yes we have.

Mrs. Meslin: Yes we do.

Mr. Zacks: That is something new, too.

Dr. Hill: But we have a few, not many.

Mr. Philip: It bothers me that this has been going on for some time and we do not get reports of you having trouble with too many of the agencies. They are usually co-operative. They may not like your decisions, but they are usually co-operative. Would it be useful to call the Ontario Labour Relations Board chairperson before us and you before us and try as a committee to find out what is going on and what the roadblock seems to be between the two offices?

Mr. Zacks: The roadblock is simply the board's interpretation of what their powers and duties are under the legislation. They have a fairly firm opinion of what they can give us. Also, we are looking at a different point of view. If you asked the chair to attend, I am sure she will explain to you her legal views as to what she can and cannot give.

Mr. Philip: I suppose your options are either to come to this committee and say, "We are being stonewalled by this interpretation", and we could report it to the House and ask for a remedy from the Attorney General's office to make an opinion or something like that, or you could take the labour relations board to court and have the courts decide.

Mr. Zacks: That is right.

Mr. Philip: Are you in the process of initiating that or what is going on?

Mr. Zacks: Where we are at now is simply reviewing the issue at a preliminary level. I do not think it has been brought to Dr. Hill's attention at this point.

Dr. Hill: No.

Mr. Zacks: This is fresh news to him.

Dr. Hill: It is news to me.

Mr. Zacks: It is a problem that is occurring in at least one investigation.

Mr. Philip: May I suggest then, Madam Chairperson, that we ask Dr. Hill prior to our summer meeting, to report to us as to whether or not this is still a major problem, and whether or not he feels that it might be useful to have a proper hearing of the problem with both sides present. We have done that with the public trustee and I think that it turned out to be a useful experience.

Dr. Hill: Let us examine--I think you took the words out of my mouth--a little more definitively the current extent of the problem and get back to you.

Mr. Bell: Mr. Philip, that is an excellent suggestion. My view and concern is, though, that as to the question of ongoing delay--and there has been a substantial delay--I would think with all the talking, from what I hear Michael Zacks saying is that all the talk is not going to help any more. They have a very firm position out--

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Mr. Zacks: The issue has not been discussed at the senior level.

Dr. Hill: This is very new.

Mr. Bell: I guess what I am saying is that in view of the last application and the position that the court took, I think if your legal counsel went back to the court and sought an early application to determine that point, it would probably be granted and probably before the end of June. That is faster service than you can get here I would think. That does not prevent this committee from doing that as well after the application is heard and determined, but it looks like every step of the way you are going to be met with whatever legal position the board believes it can raise.

Madam Chairman: Mrs. Meslin, you had a point?

Mrs. Meslin: I just think there was a point of clarification. I think that there are two issues here in relation to the labour relations board. One is the new issue that Michael Zacks just raised, that they are saying that in some instances they cannot give us all the information. But that is not the same issue as the delay issue and their holding cases and refusing to give us the files as a result of the court decision.

Once the court decision came down those files were released to us. Now the question that Mr. Philip raises is a secondary question about whether in those files there are a lot of delay cases that we are looking into, and I think his concern is: are there a lot of delays that the labour relations board is having that we are investigating?

Mr. Bell: No, I did not take his question to mean that. I thought it was delay in your end. Oh, I am sorry. I misunderstood.

But the point I am making is that if you are going to get some roadblocks thrown up in terms of confidentiality I think the best way is to get an early application in front of the court, and even with that maybe ask

this committee to continue the discussion.

Dr. Hill: As I have said, I would appreciate some time to sit with my staff. Some of this is fairly new to me.

Mr. Philip: I wonder if you can report to the committee on the two issues. One is the delay issue which I have been concerned about, and the second is whatever action by June 30 you may have taken. If it is before the courts then obviously we do not want to deal with it. But if it is not, if it would be useful for us to have an airing of it and an examination of it, well then we could deal with that as well.

So your comments then would be: one, is there a pattern of delays that seems to be a problem within their office? If so, would it be useful for us as a committee to have them before us to ask some questions? The other is the whole jurisdictional thing and you can report on that, whether or not. So we might be dealing with two issues, we might be dealing with one or we might be dealing with none, depending on what you write to us.

Dr. Hill: We will find out.

Mr. Philip: But I think that we should reserve the right to possibly, during the summer, at least have a day with them and you and hear both sides of one or both issues.

Dr. Hill: We can do that.

Mr. Philip: And I trust that the chairman of the labour relations board will be sent the Hansards of this, just advising of that.

On page 27, would you mind elaborating on your third paragraph, where you say: "Finally an amendment is proposed to deal with the problem of tribunals that are functus officio. This means any quasi-judicial tribunal that does not have rehearing authority in its legislation is presently unable to comply with the Ombudsman's recommendation to rehear." Did you want to give some examples or what you think?

Dr. Hill: I think we have. Did we not give some to you?

Mr. Philip: OK, I am sorry, I guess we--

Dr. Hill: I am sorry, but I think that we gave about three or four examples on pages 28, 29 and 30 right straight through with the Ontario Human Rights Commission, with the Social Assistance Review Board and a few others.

Mr. Philip: I guess where I am confused is that I am not quite sure what amendment you are suggesting.

Mr. Zacks: We suggested an amendment to the Ombudsman Act where if a tribunal is unable to reconsider a matter on an Ombudsman's recommendation, that there be a provision in the Ombudsman Act which would provide that legal authority. Where the Ombudsman and the board or the minister agree that a rehearing would be appropriate, the Ombudsman Act would provide that authority.

Mr. Philip: You have proposed that to the Attorney General?

Mr. Zacks: Yes, with a number of other amendments.

Mr. Philip: Have you had any initial feelings or response?

Dr. Hill: I recieved a letter some months ago from the Attorney General saying that he would expect the amendments to go through some time this spring, but it is still a bit vague. We do not know when and we have not heard anything since that letter, but he has assured us in correspondence that the amendments would go through. They have cleared them, looked at them and approve of them. When it is going to happen I just do not know. I am still waiting.

Mr. Philip: On page 37, do you care at this point in time to give us a list of the worst offenders?

Dr. Hill: I did not get you. I am sorry, Mr. Philip. What is it on page 37 you are looking at?

Mr. Philip: On page 37, you are talking about response time. "The Ombudsman's final report averages a three and a half month response time. These figures vary widely among government agencies, but as we accumulate more data we are improving our ability to plan effective strategies to deal with these delays." I recognize you are preparing the statistics, but can you give us some idea who the worst offenders are right now?

Mrs. Meslin: Actually, I have put quite a bit of data together that deals with this year, that shows those breakdowns by file and by ministry and agency. I think you might appreciate looking at them and having them in front of you.

Mr. Philip: Good. I do not want to take up any more time at this point in time because I think we want to look at some statistics. Not today? I am sure other members want to ask questions.

The Vice-Chairman: My understanding is that we are just going to be addressing questions to the Ombudsman on the report as given at the last meeting. Are there any other questions people have with respect to that report?

Dr. Hill: It is not over until it is over.

The Vice-Chairman: I would like to make an observation and compliment the fast action. I rose to ask a question on quality of care with respect to the handicapped in primarily rural areas like my own, and your person has already contacted the resource person we have in Georgetown. I think it is going to be a very happy arrangement. That kind of implementation of suggestions is really appreciated by myself and I want to compliment you on that.

I think counsel has a comment or two to make.

Mr. Bell: Some of these have already been dealt with by members on the last day. The public trustee issue, page 24: This is a matter that the committee must address in its report. You have commended Hugh Paisley, the new public trustee. Is he now permanent?

Dr. Hill: Yes.

Mr. Bell: Congratulations, Hugh. You have commended him for his involvement in the resolution of the matter, though I take it that this issue that was raised, I guess two years ago now, is finally resolved and you are

not asking the committee to do anything more than to take notice of the resolution and provide whatever comments to the new public trustee and yourself as may be appropriate.

Dr. Hill: Absolutely. We are completely pleased with the co-operation and the work that is being done. We want no other changes and we take no other stands or measures here because we are satisfied with our relationship now with the trustee, and nothing else, as far as we are concerned, needs to be done.

Mr. Bell: I had a couple of discussions with him before the resolution was effected. Can you tell me if my understanding is correct? Regardless of the terms of the resolution and as for the specific matters that were under investigation, do I understand that on behalf of the office, he has reserved the right at any time in the future, be it a future investigation specific or a future matter general, to take issue with the Ombudsman's jurisdiction to investigate the office of the public trustee?

Dr. Hill: Yes, he mentioned that and said that he hoped it would never be necessary.

Mr. Bell: OK, but it is your understanding of that as well.

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Dr. Hill: That is right. That is our understanding. It is not a point we are arguing right now.

Mr. Bell: Knowing Mr. Paisley as I do, if a matter is resolvable, he will make every effort to effect that result.

Mr. Zacks, maybe it is premature, but can you help me a little more with that proposed amendment on the functus officio issue? Is it something in the Ombudsman Act that will give a governmental organization the legal authority to accept and implement one of your recommendations in respect of a decision already made?

Mr. Zacks: Yes. The intention is to allow those tribunals that do not have power in their own statute to reconsider and to raise the functus argument, to agree to grant a rehearing based on legal authority contained in our act. It is premised on agreement being reached. There is no coercive power attached to it. They are not obliged to do it, but if they agree with the conclusion that is reached and they agree that a rehearing is the appropriate resolution in the matter, then there is authority for them to do it.

Mr. Bell: Are you aware yet whether that amendment will be part of the package of amendments that is expected this spring?

Interjection: Ues.

Mr. Bell: It will be?

Mrs. Meslin: It was part of our discussions with the Attorney General's staff and they agreed.

Mr. Bell: I am sorry; I did not follow that. OK.

Mr. Philip: If I am not mistaken, that is not one of the bills they

have put on their priority list.

Mr. Bell: It has not been on the priority list for 10 years.

Mrs. Meslin: Eleven years.

Dr. Hill: We are still hoping.

Mr. Bell: Forgive me for asking this question, but I think you will know why I am asking. On page 33 is an example of the functus officio problem. What is it about a human rights' investigation that creates a functus officio issue?

Mr. Zacks: There is a clause in their statute that says their decision is final.

Mr. Bell: Whose decision?

Mr. Zacks: The commission's decision. We are talking about the commission in this case.

Mr. Bell: You mean a decision to request the appointment of a board of public inquiry.

Mr. Zacks: That is rarely the complaint. It is usually the decision not to request. On an application for reconsideration, where they continue to deny the complainant's request to recommend a board of inquiry, that decision is final. That is when it comes to us. If the Ombudsman concludes that there was some maladministration and recommends a rehearing, that clause prevents them from that implemented recommendation.

Mr. Bell: On the issue starting on page 35, delays outside your control"--I like that phrase--you have given us on page 36 your general average. This may be something for statistics and if it is cut me off. If your general average is four weeks to respond, then you have to have a few in the hopper that have taken a lot longer than that. On the other side, you must have a number that have taken less than that. How close are you to naming names? You know what I mean by that.

Mrs. Meslin: Are you talking about governmental agencies?

Mr. Bell: Yes.

Mrs. Meslin: We are hoping to bring that data next week.

Mr. Bell: Are you going to give us specific statistics for each all governmental organization that make up the general average?

Mrs. Meslin: The data I am in the midst of preparing right now in relation to that will show the number of closed complaints in a particular ministry, board or agency, the agency itself and the average time it has taken.

Mr. Bell: Is that the data that gives off the four-week general average to respond and the four-month general average to respond that you refer to on page 36?

Mrs. Meslin: No, that is additional data.

Mr. Bell: Do you not think we should see that as well?

Mrs. Meslin: You can if you want to.

Mr. Bell: If you can put it together.

Mrs. Meslin: I should preface it by saying that all of this data is data from 1987-88, not 1986-87, which is this annual report, because it is the first full year that we have had verified information in order to bring it forth. I wanted to bring it to show this committee what we are doing and how we are doing it.

Mr. Bell: OK, but what is the data you refer to in that first short paragraph on page 36?

Mrs. Meslin: If you read page 35, it talks about the ongoing study; it is data that shows you the results of the study which reflects 1987-88 statistics.

Mr. Bell: Which among other things give you the four-week general average and the four-month general average?

Mrs. Meslin: Yes. Now I was not going to bring that data only because it did not relate to the annual report we were discussing, but I was going to bring you some examples to show you what we would be doing for next year in order for you to see it. I can do that.

Mr. Bell: My concern is this: To the extent the committee may decide that it wants to say or do something about the duration period, I think in fairness to the governmental organizations, it should have the data that gave you the general average. What you are telling me is that the statistics for the period we are going to look at do not relate entirely to the statistics in the general average on page 36. Let us not get into an apples-and-oranges situation. It should not be difficult to print out. You have it on a database.

Mrs. Meslin: No, it is all right. Although it is said in here as an illustration, it is not criticism of the last year's figures. That is the only reason. But I can print it out.

Dr. Hill: There is no difficulty in obtaining it.

Mr. Bell: I do not think anyone should presume that these figures are going to be dealt with in any critical way, but I would be interested to know where the problems on either side are.

Do you intend at all, either with respect to the so-called Kinley report and your internal report on the Kinley report--I will restrict my comments to your internal report. Do you intend to share that or any version of it with the committee?

Dr. Hill: Yes.

Mr. Bell: The thing on page 43: You have not finished yet, but you have said "an overview of the final report".

Dr. Hill: Are you talking about the Kinley report as well?

Mrs. Meslin: Or the estimated case handling?

Mr. Bell: We got the Kinley report, but you say, "An overview of the final report will be included in my next annual report." That is on page 43. Do you intend to share that final report with the committee?

Dr. Hill: I have not seen it. The staff has not finished that report. I want to look it over very carefully. I might change it all over. At that point, I would be prepared to tell you that I am prepared to share it.

Mr. Bell: So you would take that under advisement.

Dr. Hill: Exactly.

Mr. Bell: That is fine. My thinking is that we have the Kinley report and you are going to tell us about the final product. It may assist. This is relevant, I would suggest, for the so-called jurisdictional issues that the committee is going to be tackling later this year.

Dr. Hill: It is all dealing with what we consider to be a major overhaul in the use of statistics in that office.

Mr. Bell: Subject to the matters of the statistical analysis, I do not have any--oh, yes I do; sorry. Is there not a tag-loose item with the closing of the North Bay office?

Dr. Hill: What do you mean, tag-loose?

Mr. Bell: Do you remember the discussions you had with the committee and Mr. Harris when he participated at the time the North Bay office was closed? I should have dug out Hansard or notes. Were you not going to take a look at the period subsequent to the closing of the North Bay office in terms of workload or numbers of complaints received to take a second look at that closing question?

Dr. Hill: We did and there has been a rebirth and a regeneration in that office. They have a full-time field staff person there and we are holding it. We are keeping it right where it is.

Mr. Bell: Are we talking about a distinction without a difference between the closing of the former office and the current facility you have today?

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Mrs. Meslin: The former office was a two-person office--

Mr. Bell: And is now closed.

Mrs. Meslin: --which was closed. In the interim, we put a part-time field officer in there while we determined the workload necessity. We have since upgraded that part-time field officer to a permanent full-time field officer. She is still working out of her home, not an office, although the option to share office space, as some of our other field officers are doing, with large community organizations, is open.

Mr. Bell: That is my point. In terms of the function of your office in that area and the profile of activity of your office in that area, are they in substantial terms the same as before, the only difference being that you do not have an office, but you have somebody performing office functions?

Mrs. Meslin: I think the profile of the office is higher because formerly there was no outreach being done and the community was not nearly as aware of the office as we felt it should have been, and consequently we were not getting complaints in any great numbers. We now have an active outreach program that is bringing in a sizeable number of complaints, even from the part-time field officer, to now. There is a difference.

Mr. Bell: I am trying to tie it down for Mr. Harris and other committee members who I think shared some concerns. His sense was that there was a need for the presence of the Ombudsman in the North Bay area to such an extent that the office ought not to be closed. I do not want to resurrect that debate for the moment, but I take it that in terms of the need for the presence of your office in that area, you would agree with Mr. Harris.

Dr. Hill: Based on current performance and what is happening right now, I would basically agree the office is needed, which was the position Mr. Harris took earlier. We want to keep that office. There is a complete turnaround, an absolute turnaround.

Mr. Bell: That is the next question. You have no current plans to remove that person or the functioning of your office from that area.

Dr. Hill: No. If anything, we are building on it.

Mr. Bell: That is fine. Thank you.

The Vice-Chairman: I think Mr. Pollock has been waiting patiently there.

Mr. Pollock: Not on this. If someone else wants to ask a few supplementaries on this, go ahead.

Mr. Philip: On that particular item then, I guess my initial instinct would be that working out of one's home might pose a safety problem to your employee. Has that been a concern? I know that I would not want my riding office manager having every constituent simply coming into her home, because obviously you are at your home 24 hours a day. You do not have the same office hours as you do in a specific office where there are other people around. There are mentally unbalanced people out there.

Dr. Hill: We know.

Mr. Philip: I am just wondering if that has been a concern of the employee operating out of her home.

Mrs. Meslin: It has been a concern, but when we originally started the part-time field officer program, one of the prerequisites was that they were not expected to meet people in their homes. They were to arrange appointments at local libraries, or in many cases the city hall made rooms available to them at no charge so that they could meet people away from their homes. They have never had to meet people in their homes.

Dr. Hill: It still was not the best arrangement.

Mr. Philip: What would be the cost of sharing offices with the local legal aid or other agencies? Would it boost your annual costs very much?

Dr. Hill: It has been pretty reasonable. For example, in London we

worked out a deal with United Way. We are not in a government office. We worked out a deal with United Way where our costs were approximately \$100 a month in rent.

Mr. Philip: Is that the next stage in this now? Are you negotiating for a small office?

Dr. Hill: We are doing the same kind of thing in another area, in Windsor, \$100 a month, and we get all kinds of service for that. It is an incredible deal, to tell you the truth, and we are quite happy with it.

Mr. Philip: I suppose the advantage is that you have some kind of receptionist who will take messages.

Dr. Hill: We have a receptionist. We have a library. We share facilities. We have a boardroom and we have a copier. It is really an exceptional deal.

Mrs. Meslin: I think the other thing that is very important for us is that because so many people come into those community offices for other business, when they see that the Ombudsman's representative is there, they come in to see us, so our visibility has increased tremendously in those areas.

Mr. Philip: Thank you.

Mr. Pollock: Have you had any situations regarding land severances? I do not know whether you are totally familiar with land severances, but the procedure is that there is a local land division committee. It rules on the severance, but then there are 14 other different agencies that put forth their views, whether they are in favour of this particular land severance or not. Of course, one of those groups is the Ministry of Agriculture and Food.

We have been running into some situations, especially in my area, where I have seen houses built practically on flat rock, but then when they asked for a land severance, they were denied because they called it prime farm land. You can see the flat rock there. There is no question about it. I know this one situation, because it was so close to the rock, where they took the opportunity to draw in a lot of fill.

I suppose some of these people would come in and take a look at that fill and say, "You have three feet of topsoil here," but they drew it in. Have you ever been involved in any of those kinds of situations?

Dr. Hill: Let me ask my director of investigations.

Ms. Morrison: Yes.

Dr. Hill: The answer is yes. Do you want her to expand on it?

Mr. Pollock: Yes.

Dr. Hill: Would you say something on it, Gail? This is Gail Morrison, our director of investigations.

Ms. Morrison: The decision of that committee is not a jurisdictional decision for our investigation, but we do have complaints about the position that the ministry takes in that committee. We have investigated these in the past. I do not have any specific example of what has happened to those

complaints, but we do get complaints about the ministry's actions in that kind of situation.

Mr. Pollock: You have never turned one around or it has never come in front of this particular committee then, I take it.

Ms. Morrison: It has not come to this committee. That is right.

Mr. Pollock: OK. In regard to the complaints you have, do you recall why those severances were turned down?

Ms. Morrison: I do not recall the specifics of the cases. I just know that it is a kind of complaint that we get.

Mr. Pollock: We run into the situation where they will turn down a land severance because it is too close to an existing barn. I know that is a problem. However, they will turn around maybe allow a major pig operation, in which there is liquid manure--and nobody wants those places near him--whether you are a farmer or not, whether you run a dairy farm or a hobby farm or anything. But you have little or nothing to say about that as a farmer. On top of that, we have run into the situation now where you can get stuck by being right next to a major landfill, and you have little or nothing to say about that. Do you run into that situation?

Ms. Morrison: We do get complaints, but as I say, the only complaint that we can investigate is a complaint about the actions or decisions of the ministry in relation to that. We cannot investigate complaints about the party who is building. It has to be a jurisdictional complaint before we can investigate.

Mr. Pollock: Yes, but basically the complaints that we are getting most of the time are about the Ministry of Agriculture and Food turning these down, using the arguments that for this reason and for that reason, it is on prime farm land or in an agricultural area or that sort of thing--rather unfounded, to a point, as far as I am concerned.

Ms. Morrison: We would investigate that kind of complaint.

1130

Mr. Pollock: In situations where a person has a well and a highway goes right over the well--and I have heard of these situations, because you have to line up the highway, that sort of thing--you go right over the well, then you have to get more water for that person. You have been involved in those kinds of situations too?

Mr. Hill: Do we have some wells? That particular kind where the highway goes over the well?

Ms. Morrison: We get a number of complaints about what happens to wells because of highway construction. On some occasions, the ministry has provided the wherewithal to have a new well opened for a complainant, if it can be shown that there is a connection between the ministry's work and a change in the well water. We do have those.

Mr. Pollock: I know of one situation where--

Dr. Hill: They sealed over it.

Mr. Pollock: --the highway had to go right over the existing well, so they guaranteed him that they would give him new water. That in itself is quite a guarantee because in the granite areas in my riding there is not water every place you look.

This fellow has run into a major problem in finding water. If he goes far enough away--if he has to dig a trench for say 1,000 feet through granite rock, he is looking at a tremendous bill. I just wondered if you have ever had any major problems along that particular line.

Ms. Morrison: We have investigated complaints of that nature. The last one I remember having investigated was resolved when the ministry agreed to contribute to the new well. That will not always be the case because you cannot say ahead of time whether the complaint is justified or not.

Mr. Pollock: I realize that.

I have had many complaints over the situation where they get poor water. They get the water, but then it is poor water. It has iron in it, it has salt in it or sulphur in it or you name it. That seems to be an ongoing problem in my area.

Mr. Bossy: I am impressed with the fact that there are thousands of cases that you do deal with, so there must be a tremendously good relationship between your office and government agencies. They have a tendency sometimes to come down on someone within, but with the thousands of cases you deal with, to be able to resolve with the government agencies and not have them brought forward to this committee as a last resort, the record must be good.

It is easy for us to come down on our government people, but at the same time, we must also recognize that somewhere you must have good influence on the government agencies. I feel that the results seem to be good.

Dr. Hill: Thank you, Mr. Bossy. Let me speak to that for a minute, if I could. I think there are two reasons why we have had success. One is the professional competence of the staff, the investigators, the supervisory staff and the general counsel.

Another substantial reason is that I established conciliation committees with the Ministry of Correctional Services, the Ministry of Education and a number of other ministries where we have problems with a ministry and we have a high case load with them.

They strike off their top people, we strike off our top people and we sit down regularly and meet about our differences, meet about these problems and try to reconcile them. Instead of just correspondence flying back and forth, we do sit down with them in conciliation committees and try to work it out on that basis, over lunch or over coffee, and that seems to be working. Not always, because we have to bring cases to you, but the conciliation committees with the top ministries really do assist us in resolving problems.

The Vice-Chairman: There are a couple of housekeeping items here that I would like to finish up this meeting with.

The first one has to do with a meeting that we had earlier this morning. Dr. Hill, I think you would be interested in knowing that the British House of Commons select committee on the Parliamentary Commissioner for Administration is in town, as you are probably well aware, and we had a very good meeting

with the members for an hour this morning. For the sake of the record, I guess we should read in that it is the backup committee of the Legislature there. It backs up the commissioner, who is your counterpart in the British Isles. There were some significant differences in the operations of the two committees, so it was a very worthwhile meeting.

In that context, we made arrangements as a committee to meet jointly with them over lunch today. The information is that we are going to be lunching at Fentons, and there will be cabs available to take us there promptly at noon at the front door of the Legislative Building. I would appreciate it if Mr. Charlton would tell Mr. Philip that, and I guess I can touch base with Doug Carrothers, who stepped out for a moment too, so that everybody is aware of where we are going to be going and when.

The other thing is, as we arranged last week, we are going to have a statistical base put in place from the Ombudsman's office next week, so it is a fairly important meeting. The clerk tells me we will probably be meeting here in committee room 1 beginning at 10 o'clock. We will adjourn the meeting until that time.

The committee adjourned at 11:37 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1986-87

WEDNESDAY, MAY 4, 1988



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Carrothers, Douglas A. (Oakville South L)
Charlton, Brian A. (Hamilton Mountain NDP)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
McLean, Allan K. (Simcoe East PC)
Philip, Ed (Etobicoke-Rexdale NDP)
Pollock, Jim (Hastings-Peterborough PC)

Substitution:

Daigeler, Hans (Nepean L) for Mr. Henderson

Clerk: Decker, Todd

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. Daniel G., Ombudsman
Meslin, Eleanor, Executive Director
Brookwell, Larry, Systems Manager
Zacks, Michael, General Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, May 4, 1988

The committee met at 10:17 a.m. in committee room 1.

ANNUAL REPORT, OMBUDSMAN, 1986-87
(continued)

Madam Chairman: We can call this meeting to order. Good morning. Today on the agenda we have to deal with the statistics on the annual report of the Ombudsman, which all of you should have received. There are a couple of documents you should have before you. One is the statistical reporting on the work of Ontario's Ombudsman by John Kinley, for those of you who have received that.

Interjection: They do not have that yet.

Madam Chairman: Members do not have this yet? We will not deal with it? Have they got the background information? For any who would like this piece of material, I found it most interesting to review.

The other is from the legislative research service. Catherine Evans has provided you with two documents in review of statistics that have been provided by the Ombudsman's office and those should be in front of you.

What we will be discussing today is in volume 1 of the annual report, for those who have it, pages 14, 15 and 16. That is where the statistical information is set out.

Do you have any opening remarks, Mrs. Meslin? Dr. Hill?

Dr. Hill: Just a quick point. I would just like to introduce Larry Brookwell, manager of computer systems and operations, statistician, who will be assisting Mrs. Meslin in answering a lot of the statistical questions. They are our specialists in the area of statistics, and in the back, we have Mr. Zacks and Gail Morrison; so we have people here to answer the questions on statistics. That is all I have to say. Most of the questions should be directed to Mr. Brookwell or Mrs. Meslin, those that are on statistics, at any rate.

Madam Chairman: Thank you, Dr. Hill.

Mrs. Meslin: Just as a point for the members to keep in mind, we are now discussing statistics that deal with the fiscal year of 1986-87, which means that it is a year removed from the fiscal year we have just completed. It makes it a little difficult for us, but I just wanted the members to be aware of some of our problems.

First of all, there is the problem, as I said in the last meeting, of the verification of the statistics at that time. We had just begun a verification system of all of our background statistics for that year, so we will keep saying to you during the course of those statistics that some have not been fully verified. But for your purposes, I think that they will serve.

I should point out that the 1986-87 report that will be coming to you will be a verified report. We have the system on line; so in the coming report, 1987-88, you will have it all verified.

Madam Chairman: Thank you.

Mr. Philip: I wonder what you accept as a response. Frequently now, I seem to be getting responses. It used to be only the federal government that would send me letters saying: "Thank you for your letter of such and such a date. I have brought it to the minister's attention." That to me is not a response. It means that somebody then wants to keep me quite for another three weeks so that I am not bugging them as to when I am going to get an answer.

I am wondering whether you consider a response being a response that contains some content, that they are actually dealing with it or that they are sending you over a file. What is a response in your statistics?

Mrs. Meslin: It depends on what area we are looking at. If we are looking at complaints that are within provincial jurisdiction and we are looking to investigate, then a response of "I am looking into it" would not be sufficient because it would not let the investigation proceed correctly.

If, however, it is a complaint about something in the federal or municipal or private area and we felt that we had agreed, let us say, to write to a ministry to ask them to look into it, and we got a letter back from the federal government saying, "Thank you, we are looking into it," we would consider that an adequate response because it is a matter outside our jurisdiction.

Mr. Philip: I am only concerned about inside your jurisdiction because I do not know what we can do about the others. Inside a provincial ministry or agency that you have jurisdiction to investigate, a response saying that the minister or the deputy minister is looking into your complaint would not be catalogued as a response, would it?

Mrs. Meslin: Let me clarify for a moment, because if a ministry said to us, "We are reviewing the legislation in that area and hope to have the report within a number of months," we would follow it up in a number of months. We would not say that is no response because if they are in the middle of a review, that is acceptable.

Mr. Philip: I guess it just strikes me that if a ministry is clever it can rig your statistics by giving a clever answer and simply causing a delay, and you still have a response recorded.

Mrs. Meslin: We hope they would be as interested in getting it settled or getting us as satisfied as they could be. Usually, we have good co-operation.

Mr. Philip: The Ministry of Labour, the employment standards branch, underneath it is "other" as being one of the highest. Ministry of Education external review committee being the highest. What is the other under the Ministry of Labour? It is on page 2.

Mrs. Meslin: Page 2 of what?

Mr. Philip: Oh, I am sorry, I guess I am looking at Jennifer Wilson's research paper.

Mrs. Meslin: I do not have it.

Madam Chairman: We will get you a copy of that. Jennifer has summarized what has come off the computer printouts that you provided the committee with.

Mr. Philip: Maybe what I should have asked was for Jennifer to go through her research and then maybe questions might come out of that. Maybe I am jumping the gun. If I am, I apologize.

Madam Chairman: What I was going to suggest first, actually, was that if Mrs. Meslin could go through the comparative closed complaint statistics which she has provided us with, the resolve time of the issues, I think it would be helpful to the committee, and then go on to how quickly each independent ministry has responded to complaints, if that would be all right.

Mrs. Meslin: I can respond, now that we have found it. There were eight others, and they are those organizations within that ministry that we do not have a specific code for. For instance, we have a code for the Ontario Labour Relations Board or for employment standards. There are some specific small areas that we do not code, and there were eight of them.

Mr. Philip: So it is not under the labour relations board?

Mrs. Meslin: No.

Mr. Philip: It is under "other." Are they not one of the higher ones then in delayed response time?

Mrs. Meslin: I am sorry?

Mr. Philip: The labour relations board is not one of the ones that is slow in responding.

Mrs. Meslin: If you recall, at that time it was difficult to make any statistical evaluation, because they were holding our cases pending those court decisions.

Mr. Philip: They refused to respond, so therefore you do not have a response statistic.

Mrs. Meslin: It is not a fair judgement of whether they were holding back or not at that time.

Mr. Philip: They are responding now.

Mrs. Meslin: Yes, they have been.

Madam Chairman: Before we get on to response time at length, I have just been provided with the comparative closed complaint statistics. I believe, Mrs. Meslin, you have provided us with that. It outlines the number of complaints which were within or without your jurisdiction and the length of response time. Members of the committee will find it on page 3 of the memo from Catherine Evans. Maybe you could just go through it and explain the differences. What exactly do you mean by your different headings?

Mrs. Meslin: Is it the comparative closed complaint statistics that you are asking about?

Madam Chairman: It does not look like the same one. It has five points on the front page.

Mrs. Meslin: Yes, I have it.

Madam Chairman: Perhaps you could just go through that, and then the committee will have some background.

Mrs. Meslin: Looking at item 2—because the first is just a summation—closed complaints, of course, are those complaints that we have finished with. We have nonsupported, supported or discontinued the investigation. Item 2 includes closed complaints and information requests. They are complaints that come into the office that we can respond to immediately without an investigation. They can be in any number of areas. They can be nonjurisdictional, jurisdictional or just straight requests about private agencies, nonjurisdictional. It is pretty straightforward.

That is the total number of complaint pieces by phone, by personal interview, by letter, that come through our office in a particular year. That is the one that has totalled 17,326 in this year.

1030

Complaint disposition: That is how we dealt with the complaints that came in, whether we resolved them, whether we did not resolve them, whether they were outside our jurisdiction or whether they were just straight information requests to which we gave referrals or responses that we could do immediately.

What kind of detail would you like, Madam Chairman? Any more than that?

Madam Chairman: No, I think that is appropriate.

Mrs. Meslin: In item 4, under settlement result, we try to give you some indication where we have settled complaints that have been resolved, how many were in favour of the complainant and how many were in favour of the governmental organization. That is in a settlement result.

When it says "in favour of the complainant," it could very often be that complainants misunderstood the information the governmental agency was giving them, and when it was clarified for them, they felt it was resolved and it was resolved for them. They were happy with what they were looking for.

Item 5, the breakdown of complaints and information requests by jurisdiction: Where, at the top, in item 2, there is an overall total, here it is the breakdown that is within an outside jurisdiction and information requests that total the overall.

In item 6 on page 2, we try to explain in numbers how we dispose of our jurisdictional complaints: whether we support them with recommendations; whether we support them with formal recommendations; whether the formal recommendations have been accepted by the governmental agency or denied by the governmental agency; whether these dispositions were complainant-assisted, independently resolved, unsubstantiated or discontinued; then an overall total of that; and then the number of recommendations in recommendation-denied cases we had in those years.

Mr. Philip: If we were to graph item 4, it would show an interesting pattern of finding less and less over the period of three years in favour of the governmental organization and more and more in favour of the complainant. Do you have any reason why there is that pattern? I realize it is very hard to generalize with only a three-year pattern.

Mrs. Meslin: I am afraid I do not have any specific reasoning. Whether it is our increased ability to discuss matters with ministries and get reasonable resolutions of things the complainant did not understand and now does or whether it is just that we are having more success overall in terms of explaining the situation to complainants, I would not want to venture an answer.

Mr. Philip: I was just wondering whether there was more screening or gate-keeping at the front end that would prevent or discourage frivolous or less substantiated or unfounded complaints from going forward to the point where it is actually a complaint.

Mrs. Meslin: I do not know that that would answer the question, though, of why there are more in favour of the complainant.

Mr. Philip: If you have an initial screening when they walk in the front door, then the chances are that you are getting a higher quality of legitimate complaints. They finally sit down in the office and go to the point where you have a file on them. It may just be the shuffle of the cards. You are only dealing with three years and it may be a coincidence.

Dr. Hill: I would make a very general comment. Do not ask me to substantiate it as such, but it is a feeling. The feeling is simply this, that governmental agencies seem to be more inclined to resolve cases in favour of the complainant now than they were several years ago. In other words, we are getting more co-operation. There is a move towards resolution and conciliation, I think, more now than there has been. This is just a general statement, but I get that feeling. Once we sit down with them, once our committees meet with them, they resolve to a great extent in favour of the complainant—more so.

Mrs. Meslin: If you notice, on page 2, item 6, section 18, investigation discontinued, there is a larger number of our applications of section 18 in the year we are looking at. It has increased over and over. That is because of the way we are handling those when they come in. That may be an answer to what you are talking about, although it is not the screening right at the door. It is, after having looked at the whole situation, deciding that there is another remedy that the person should seek.

Many of those can be attributed to the way we have begun treating correctional institutions, letting inmates know that there is another step in the process or there is another remedy to seek.

Madam Chairman: Did you want to finish with paragraph 7? I think you were just doing that. It seems quite simple.

Mrs. Meslin: Yes, I think it is pretty straightforward. That is the number of recommendations we have made over the year compared with the other two years and those that have been denied.

I should indicate that 46 that were denied is quite a large number. A great many of those originated with the Workers' Compensation Board, but were settled before they ever got here because of the new committee system that we had introduced with the Workers' Compensation Board and our office in order to try to settle out those cases before they had to come before this committee. I think we have been very successful in doing that.

Madam Chairman: I am just looking at item 2, which is the number of closed complaints. I was curious about the increase in the amount of closed complaints from the previous years to this year. You indicated that section 18, as I note, had been used. About 600 more had been closed because of section 18 than previously. Do you attribute the number of closed complaints to anything else? There has been an increase of over 3,000 in 1986 from 1985.

Mrs. Meslin: That is the overall total.

First of all, in terms of the jurisdictional complaints, we have been resolving more than we have ever done before. We also have a great many closed complaints now that are outside jurisdiction, where our field officers and district officers are now able to handle the many more complaints that are coming in more quickly and get them in and out more quickly. I think it is a combination of the increase in outside jurisdictional complaints, as compared to what we have had before, and the way in which we are disposing of them.

Ms. Evans: If I may, Mrs. Meslin, as I recall, the discussion of the previous annual report revealed that you were starting to keep track of calls that perhaps you had not previously even made note of, and these are being reflected in your statistics, information requests, in particular, which, as I say, previously you had not bothered with and no one had made a note of. They were small requests answered immediately on the telephone.

Mrs. Meslin: I do not think that is so. I think we have always kept track of whatever has come in, unless there is something I am missing in the question. We have not done anything differently in terms of receiving them. We have counted things over the years differently.

Ms. Evans: Maybe that is it. I am just wondering, are you counting things differently this year than you did in the previous year?

Mrs. Meslin: No, not in the years that you have before you.

Ms. Evans: The three years are all the same?

1040

Mrs. Meslin: The comparative statistics are accurately reflected in the way we count.

Madam Chairman: I just have one more question at the moment, under item 3. I am just looking at outside jurisdiction, and there seems to be a real substantial increase in that. You have alluded to that—over 2,200 complaints that were outside the jurisdiction. I am curious. Have you kept track of what types of inquiries have come in that are outside the jurisdiction?

Given that we are going to be discussing expanded jurisdiction, I would be curious to know if any of those have been in the areas that we are

considering expanded jurisdiction in, for example, the public hospitals or children's aid or the Housing and Urban Development Association of Canada, because that does seem to be quite a significant increase; or are they just people who are looking to the Ombudsman for assistance?

Mrs. Meslin: If you want to get the breakdown, on page 14 of the annual report, the very bottom-listed areas are the ones that are outside jurisdiction. You can see that private ones total 3,196, which is an increase over the previous year. The federal ones that are outside jurisdiction are 947.

It is difficult, within the framework of these, to indicate whether any of our expanded jurisdiction topics are covered. We certainly get a lot of those requests, but we have not broken them down in those areas specifically.

Madam Chairman: Would it be possible at all to break them down in anticipation of our hearings in August or September? Perhaps that might be of assistance, if we have some basis for the fact that people have been coming to you already with problems.

Mrs. Meslin: We can certainly do it. One of the things I think the committee should be aware of is that in all our literature, in all our outreach programs, we indicate at the beginning what types of things are outside our jurisdiction. So it almost discourages people. For instance, if someone has a hospital complaint or a complaint about a child in care, they know that the Ombudsman does not handle those. So they do not even make the complaint.

We do have some, and we can certainly assist the committee with that, but we do not have as many as we would have.

Madam Chairman: I think it would be helpful if you do have some kind of breakdown. I realize people do not come to you if you do not do it, but obviously you are getting a number of inquiries that are outside your jurisdiction. That might be a good basis for us to start from, if a number of them have been in the area, even with the public knowing that you do not delve into that area at all.

Mrs. Meslin: I think a great deal of the increase in outside jurisdiction cases has to do with the introduction in that year of our field officers. What happened in that year was we put field officers into London, Windsor and Sault Ste. Marie, places they had never been before and they started the program of introducing the services of the Ombudsman to their community.

At the very beginning, you get a great influx of outside jurisdictional cases, until people begin to be educated about what we do. That was the beginning of the program, and I think what has happened is that we saw a tremendous increase with the introduction of those new field officers.

Mr. Philip: Is the largest number proportionally of outside jurisdictional complaints in northern Ontario a result of the tremendous influence of the federal government in the operations vis-à-vis our native peoples?

Mrs. Meslin: I do not know if that is specifically the case, but certainly because of our presence in the north and in our outreach program with native people, it is the same kind of answer that I just gave. We get a great many native people coming to us with federal problems because they now see somebody.

Mr. Philip: I guess the point I am making is that in northern Ontario one is affected more directly by the federal government than somebody living in Metropolitan Toronto.

Mrs. Meslin: I think that is true and I think that is why we have been pushing for a federal ombudsman specifically in terms of native problems.

Mr. Philip: That might be something we should once again put into our report and then send a copy to our federal friends in Ottawa, that once again we are concerned about the number of federal complaints and that they should perhaps keep the promise they made years ago of creating a federal ombudsman.

My question to you is on item 6. There is a 400 per cent increase in formal recommendations. I am wondering whether this is a policy change of any kind, that you are moving more towards the formal recommendation as a vehicle towards getting action, or is this just an accident?

Mrs. Meslin: No, it is not. There is no policy change. I think you will see a great number of them because of the Workers' Compensation Board changeover. The Workers' Compensation Appeals Tribunal was being introduced.

WCB had a great many cases that had been lagging behind, and we made formal recommendations to them to get the process moving, so we could get it out of their area and start to get those things cleaned up. That is where the committee process came in.

Mr. Philip: In 1987 and 1988, we will likely see a decrease as a result of that.

Mrs. Meslin: Yes.

Dr. Hill: Madam Chairman, could I back up and go back to a question Mr. Philip was making? We are seeing our federal complaints increasing at an increasing rate. That is happening, I am just being informed again by Larry Brookwell. This is happening at a very, very fast rate in the Kenora area.

Those are native people coming in complaining about federal agencies. We have been pushing and will continue to push for a federal ombudsman. We are doing stuff informally that a federal ombudsman should do formally, in many ways. Anything this committee could do to further the cause of creating a federal ombudsman would be critically important to the work of the Ontario Ombudsman.

I think they at least should pay us back. The federal government should pay us back for the amount of money and time we spend in handling federal cases. That is kind of a terrible thing to say, but I feel that way. If you can help us push for a federal ombudsman, then your deliberations would be most helpful, and your report.

Mr. Philip: I guess one of the things that—

Madam Chairman: Just one thing. Mr. Bossy, was it on the federal ombudsman or a new question?

Mr. Bossy: I wanted to ask a question of the Ombudsman because of the remarks he just made regarding the request for a federal ombudsman. I am looking at one of the areas here in the statistical information dealing with the Ministry of Correctional Services.

That area would possibly identify the outside jurisdiction. I was surprised when I looked at those figures to see that within the jurisdiction, that really was by far the biggest amount of requests for help. Outside of the jurisdiction looks minimal to me.

In the correctional end of it, you would think there would be many requests that would come to you that would be outside—many more than what I thought—304, or I am not reading them right? It seems to be a very low number, because knowing the criminal act, and all the people that are in the correctional institutions because of a federal offence, and directly related to that, it seems like a small number of complaints compared to those within the jurisdiction.

The types of complaints can have a very wide-ranging nature—I would not know—but the figures do not seem to be supportive of that federal ombudsman.

Mrs. Meslin: I think that you cannot see that as a result of correctional services within jurisdiction complaints. First, the reason that you see within jurisdiction so much higher than outside jurisdiction is that inmates in the institutions had to write to us to complain. They generally complain about the problems within the institution. That is a provincial institution, so they are automatically within the jurisdiction.

They have written to us about a problem in the institution. The lower number outside is those who did not write, but who used the telephone or who, once they got out, came and called us.

1050

We have a changeover in the way we treat institutional complaints now and you are going to see that outside jurisdiction figure go way up because the institutions have installed telephones where inmates can call us. What will happen now is, although the complaint they give us on the telephone is jurisdictional in terms of it being a provincial institution, because it is done by telephone, we will have to count it outside. Our complaints cannot be counted as within jurisdiction unless they are written. So we say to the inmate, "Now that we know your problem, please write us and tell us that you want us to handle it so that we have a written complaint." It is a technical thing that does not have anything to do with federal jurisdiction.

Mr. Bossy: I wanted to ask a question, dealing more with our own ministries here. It is in general terms. When the initial complaint comes to you, subsection 19(1) says that before investigating any matter, you must notify the ministry that you are going to investigate. I would have to assume there is a considerable amount of preliminary work. What is the length of time from the original complaint to when you have concluded, "We will notify the ministry we are going to conduct an investigation?" You take everything at face value as you get it, but then you must be able to make a determination whether it is a legitimate complaint and whether you should proceed to get into the position of a full investigation. What is that length of time, or did I miss those figures somewhere in the statistics?

Dr. Hill: We do not have the figures. We can get them for you.

Mrs. Meslin: We have a figure for 1987-88, just to give you some idea, if that is all right. It is approximately 64 days.

Mr. Bossy: In reality, for you to prepare to notify the ministry, would take in the area of 64 days.

Mrs Meslin: That is right.

For instance, very often, someone will telephone in a complaint and then send in the complaint. When we see the complaint sent in, it is not clear to us specifically what the problem is so we may have to do quite a bit of communication—go to see the person or write to him or have him clarify what it is. Time runs, and we look at it from the moment it is a jurisdictional complaint and comes in to us until we send out that 19(1). What are all the preliminary problems that we must look at before we notify a ministry? In many instances, it may just be that we are clarifying something before we send it to the ministry because we like the ministry to have a thorough understanding of what the complaint is going to be.

Mr. Bossy: Using that, what I am trying to compare here is your preliminary work taking approximately 64 days with the days that it takes for a response to work that you have already done, so they would practically repeat what you have done before they would respond to you, so the days do not vary that much when it is ministry people doing it and then responding to you. As you are preparing, they are preparing.

Mrs. Meslin: There are many reasons for delay by a ministry in responding. With some things we can say they are just not looking at it, but in many instances, it may be a complex legal issue that they have to get legal advice on. They may have to get files from regional offices, etc.

Mr. Bossy: But you quote those in the "other." With regard to the Treasury and the Ministry of Economics, under "other" it is 80 days, but generally it is 66 days. That is page 2 of Jennifer's paper, and again in the case of even down below here, the ministries that were quoted, and then it says "other." Again, it is in the top bracket.

Mrs. Meslin: But "other" only means those that we do not have a code for. When it says, for instance, "Ministry of Treasury and Economics," that is a particular code for our computer. "Other" may be one of the agencies within that ministry that we do not have a code for because we get so few cases it does not pay us to do it.

Madam Chairman: Thank you, Mr. Bossy. I just had one point of clarification. When you mentioned that when people from correctional institutions call you, that is an outside jurisdiction. Then later they may write in, and then it is inside jurisdiction. Are you going to make some counting so that they are not recorded in duplicate, so that a call and a letter written in may not be recorded as two complaints in to you? Do you know what I mean? If people call in, there is an outside jurisdiction complaint. Then if they write in, follow it up with a letter some time after that and now it is inside, will you be able to move that to the inside jurisdiction complaint, or will it be recorded as two complaints?

Mr. Brookwell: We looked into that and, on average, it is about 10 per cent repeats. The work that is required to try to separate them does not, at this point anyway, justify going to that length to try to subtract those.

Madam Chairman: So you are saying that if people make an outside jurisdiction complaint by telephoning in, either you have been able to solve their problem by telephone or only 10 per cent of those people follow up in

writing. In fact, there are 90 per cent that are not being serviced at all. Which is it?

Mrs. Meslin: It is not that they are not being serviced.

Mr. Brookwell: They do not follow up.

Mrs. Meslin: The 90 per cent is the kind of thing either that needs a referral or where we tell them they have not done all of the steps they have to do within the institution even; so they are getting an answer. It is for those people who raise a problem with us that looks as though we are going to have to look more deeply into it that we say, "Please write and let us know that you want us to do this formally and we will do it for you."

Mr. Brookwell: I am not sure that everyone will be seeing John Kinley's report, but on page 29 of the report, in the second paragraph, that problem is addressed and the figures for 1986 and 1987 are indicated. It is 10 per cent, 170 instances of telephone calls followed by a written complaint.

Madam Chairman: OK, great. Would anything have been done with the outside jurisdiction complaints? If someone calls in by phone and makes a complaint, is there any instance where it is able to be solved even though it is outside jurisdiction?

Mrs. Meslin: Oh, sure. It just means, though, that in terms of a full-blown investigation, our legislation does not allow us to do a full-blown investigation on the basis of a telephone call. But many people who are calling in need some help that can be done for them by telephone without any kind of formal investigation.

If you look at some of our statistics, it seems to take a long time for us to handle what is outside jurisdiction, and that is because in many instances we will be doing some preliminary step. If a person calls and says, "I did not get my unemployment insurance cheque," and he does not seem to understand how to go about doing it, our officers may very well phone unemployment insurance and put them in contact with the person, so that something is always being done for these people. It is just not a full-blown investigation.

Mr. Brookwell: Just to add to what Mrs. Meslin said, page 17 of the annual report breaks down the outside jurisdictional complaints by "Information Provided," "Inquiries Made" and "No Action Possible." You can see quite clearly that we actually do make inquiries and, on occasion, we resolve problems in about 20 per cent of the cases. What we hope to do in the future is to break that inquiries made category into two categories where we just make inquiries and also where we facilitate a resolution of the problem.

1100

Mr. Lupusella: On page 14 of your final report, volume 1, under labour and Workers' Compensation Board, you mention that in 1986-87, you received 352 cases which were within jurisdiction. We are talking about the Workers' Compensation Board.

You received 687 outside the jurisdiction. The question I would like to ask is what type of problems related to the Workers' Compensation Board are coming to your attention, being outside of your jurisdiction? Would you like to give an example for us to understand the process?

Mrs. Meslin: Most of them are people phoning us about a WCB complaint, who have not gone through the appeal proceedings. They phone us. They have a complaint and we say, "Have you done all these things?" and they say no. We say, "Do them and then come back." That is outside jurisdiction.

Mr. Lupusella: OK. I got the initial impression that there were people living in Ontario, for example, and the accident took place maybe in Quebec or British Columbia or you name it. I was a little bit misled by the number.

Mrs. Meslin: No. It is far more similar to the one I told you.

Mr. Philip: I wanted to do a follow-up in terms of a delay that I was somewhat concerned about. Under the Ombudsman Act, under section 20, you have the right basically to require the production of documents, etc.

The court case against the Ontario Labour Relations Board in the conclusion says—maybe you will have some staff who may want to elaborate on this—in the last paragraph, "Having regard to the provisions of these two statutes, it is sufficient to conclude for our present purpose that the extent to which the Ombudsman may compel production and obtain information in any case will depend on the nature of the evidence sought considered in the light of section 20 of the Ombudsman Act and of the provisions of the Labour Relations Act"—that is the secrecy provisions I assume you are talking about—"designed to maintain the secrecy of matters before the board."

Is this still a major problem that you are having, the use of secrecy provisions in certain statutes or the use of the secrecy provision in the Freedom of Information and Protection of Privacy Act with other ministries? I know that MPPs are having this thrown at them, that they have to give authorizations and all this kind of thing. It simply delays our dealing with cases. I am wondering if you want to elaborate any further on the labour relations situation or on other ministries or agencies or governmental bodies that may be using secrecy provisions to delay responding to you.

Mr. Zacks: If I can respond to that, on the labour relations case, as I mentioned the other day, we do have one case currently outstanding where the labour relations board has raised one of the secrecy provisions in the Labour Relations Act to deny us information we believe is relevant to the continued investigation of a complaint. We are currently dealing with that case and attempting to get that information through our legislation.

In general, this problem does come up from time to time in investigating complaints and we resolve them on a case-by-case basis without having to go to court. We decide either to specify specifically what information we need and we obtain it, or we review our requirements and decide it may not be necessary at all to get it. But the information was asked for in the general aspect of investigation, but we believe we could continue without that specific information. So it has not actually been raised. You may recall that it was raised in one of the issues with the public trustee, but that has been resolved. We have achieved sort of a concordance on how we are going to proceed.

I would not say that freedom of information is becoming a problem, but it is raised from time to time with various ministries. The issue is being raised with us. We do get various officials raising freedom of information concerns. My understanding of the Ombudsman's role in freedom of information

is that the intention of the Ombudsman is to get the same information he has always been able to obtain under his legislation. The intention is not for freedom of information to be used as a device to deny us access.

A very recent example is an issue that occurred at one of the correctional facilities where a memo has been distributed to all superintendents from, I believe, the deputy minister's office or one of his senior officials. I have not seen the memo, but my understanding is it is a list of various agencies, the Canada Employment Immigration Commission and the Canada pension plan. The Ombudsman is included in the list as well. It raises freedom of information as an impediment to giving us information. Certain information should not be given to us.

I have had discussions about this memorandum with the legal director at the Ministry of Correctional Services. He and I are essentially in agreement that the intention is not for the Ombudsman to be denied information, so that problem will likely be resolved, but we are monitoring it closely. If it does present a problem, then it will have to be raised in a more formal way through the Ombudsman and the deputy minister.

Mr. Philip: Where my staff has been frustrated—and I think we may have resolved the problem—is with family benefits. You know, you call up. My staff has better things to do than to invent information on Mrs. Jones and call up about her case. Obviously, they have the authority to inquire into her case or they would not have the information to begin with. When you get some bureaucrat then simply saying, "Unless I get an absolute discharge from the complainant, we cannot look into this case." What you are really saying is, "We are going to delay the case for another week." When there are kids who do not have food on the table and you are trying to resolve where the cheque is, it really is preposterous to use this kind of dodge.

Mr. Zacks: I could make a suggestion that when the bill comes up for review, there is a long list of bodies that are more or less exempted from the personal information requirements: the Ombudsman, the commissioner, the Provincial Auditor and many others. You might try to get MPPs included in that list so that you would be able to get personal information.

Mr. Philip: That is a good suggestion.

Madam Chairman: An excellent suggestion.

Mr. Philip: In case any of us forget, I am sure you will remind us.

Mr. Zacks: Not everybody is the opposition at one point or other.

Mr. Philip: If we do not resolve things, you know where they eventually end up.

I just wanted to ask a question of Dr. Hill. These statistics are interesting but they basically do not give us a feeling as to how much time you and your staff are giving in terms of the broader picture, namely—you have used the word—systemic problems. I am wondering, are you still of the view that this is a major responsibility of the Ombudsman, not just to stick your thumb in the dyke and solve individual problems, but to look at systems and see where those patterns are and try to resolve them?

Dr. Hill: Yes.

Mr. Philip: You have done a major systemic study of the Workers' Compensation Board. What are some of your other priorities? Where do you see that the next Ombudsman should be headed and looking?

Dr. Hill: We did one in Timmins, for example. We did the one on psychotraumatic problems in the Workers' Compensation Board. My emphasis has been and will continue to be to do systemics wherever we feel they should be done, even with our limited resources, and they are limited in terms of the research that is required generally. To carry out systemic investigations requires time, research and statistics.

As you pull your investigators and your top people off of your cases, it does eat up a fair amount of time. Nevertheless, I still think systemic investigations are worth doing and should be done when needed and called for. When I am advised by my staff that systemics are needed in a particular area, I try to do it.

1110

Mr. Philip: I will let your staff read Hansard and I will just take a moment on this to emphasize that I think that perhaps a systemic study should be done into the labour relations board. Let me give you a concrete case.

The Teamsters applied for certification in September 1984. The decision did not come down until March 1988. Now the employer is contesting who was an employee at that time and says he cannot provide an accurate list of who were employees. The Teamsters have to provide a list by May 16 of whom they say they signed up.

The chances are that it will go to another hearing. I am told by labour lawyers I spoke to this morning that if you go down on a Friday and do not get a certification, if it is contested, you can wait one month at the labour relations board to have even a hearing date set by the registrar. That hearing date then is likely to be in another six or eight weeks from that time.

When you are dealing with a union that is standing by not knowing whether it is going to represent these workers or not, you are talking about increased costs to the workers and you are talking about more instability in the workplace and probably extra tensions that may well lead to more conflict between the union and the employer.

I am told that while the particular Teamsters case may be an unusual one, there is one that is almost as bad, which is the Retail Wholesale and Department Store Union's application for the certification of Yellow Taxi in Hamilton. It just seems to me that there is a problem there and that the problem is still existing, notwithstanding all the excuses that may be given by them.

Dr. Hill: On the whole question of delay, let us see what my staff says. Eleanor is saying that we do systemics on the basis of complaints to us.

Mr. Philip: Well, you just got a complaint.

Dr. Hill: All I can do is take this under advisement, see what our staff has to say on how long it has been taking us to handle these things and perhaps get back to you. Not that particular one.

Mr. Philip: Thank you.

Madam Chairman: Mr. Philip, we have automatically moved into the issue of response time by government organizations. The memo sets out response to subsection 19(1) letter to 19(3) and to section 22. Are there any further questions from the committee on that aspect?

Mr. Lupusella: I would like to make a comment.

Madam Chairman: A comment on the delay time or a comment on a fellow member's comment?

Mr. Lupusella: An editorial comment in relation to what Dr. Hill told us. First of all, you have to receive the complaint, but most of all the issue must be settled before the labour relations board in order for you to initiate an investigation.

Therefore, the example which was just brought to your attention is the worst example to the debate because the issue is before them and is not before you, even though you are going to get a complaint from the union about delay or bad tactics which are used. You cannot get involved because the issue is not settled before the labour relations board in order for you to get involved in the issue. Am I correct?

Dr. Hill: Yes, I think you are. But I think he was referring basically just to the general problem of delay, which we could look at if it involves complaints generally. On that basis, we could get involved.

Mr. Lupusella: Not on the issue per se?

Mr. Philip: You would agree, I am sure, that you can look into why there is a major delay notwithstanding the merits of a case. That, in fact, is what Dr. Hill has been doing in this particular case, Mr. Lupusella, which you seem to be so ill informed about.

Mr. Lupusella: You have brought to our attention the worst example of something which is before the Ontario Labour Relations Board. The delay has been caused by something that was not brought to the attention of the Ontario Labour Relations Board by the employer. So there is a problem there which must be settled before the Ontario Labour Relations Board. I do not understand, for something that is clearly requested by the board, that to submit—

Mr. Philip: I am not going to argue with Mr. Lupusella.

Mr. Lupusella: You do not have to.

Mr. Philip: He asked much better questions when we were writing them out for him.

Madam Chairman: Thank you, Mr. Philip. Tit for tat there.

Since nobody wants to ask questions on the delay in responses, the chairman will ask a question in this area. I note that the response to subsection 19(1) appears to be anywhere from 14 days to 97 days, but when we get into subsection 19(3) and section 22, we are into about 131 days.

Mr. Lupusella: Next time, insult yourself, Mr. Philip.

Mr. Philip: Why are you in such a bad mood? Have you got no senior citizens to beat up this week?

Mr. Lupusella: When you are telling me—

Madam Chairman: Mr. Lupusella, could we get on with what we are discussing? Why do you two not go and discuss your problems out in the hallway and we can continue with the committee's work.

Mr. Daigeler, did you have anything to say or were you just caught? Send it to the Ombudsman.

Mr. McLean: Excuse me, Madam Chairman, maybe you could bring me up to date as to just exactly where you are?

Madam Chairman: I will tell you where I am, Mr. McLean.

Mr. McLean: What page are you on?

Madam Chairman: We are on the memo that is before you, which has been written by Jennifer Wilson. We are on what I consider to be the last part of our deliberation on this issue. We are dealing with government organization response time. There has been some questioning along this line. I was just going over it and noticing that the delay time in the subsection 19(3) letters and the section 22 letters in response is sometimes in excess of 200 days. I was just wondering what you thought of that.

Mrs. Meslin: I would like to make a comment. I notice that in this report although the days are stated, the number of cases involved is not. So you have a little bit of a distortion. If you look at page 2, under Ministry of Agriculture and Food, beginning farmer assistance review committee, 84 days, that involved just one case, as did the next one, the farm products appeal tribunal. It is a little bit difficult to try to respond.

It would be easier if the members could look at which of these agencies had many cases where there was a large delay in the ministry's response time. For instance, you mentioned 235 days in subsection 19(3). That is the Inflation Restraint Board, and that was just one case.

Madam Chairman: Obviously, they are not aware of the Ombudsman's procedure as well as others that might—

Mrs. Meslin: It may well be. That is true. It may well be that if it is an agency that has not dealt with us before, the whole process throws them into a bit of a tailspin until they figure out what they are supposed to do.

Mr. Daigeler: Since I do not happen to have the benefit of previous discussions on this matter, could someone perhaps clarify for me what this is all about in terms of response time? Does that mean you write and then you receive a letter back from the ministry or a solution to the problem? What do you mean by response time?

Second, what is the difference between one, two and three? Is this cumulative? The first letter takes 47 days and then after that comes the hearing and it takes another 160 days or whatever? What does this document really represent? If somebody could explain this a little bit, I would appreciate that.

Madam Chairman: Mrs. Meslin, I will leave this with you, but the third point perhaps is even how long it takes you, in the interim, to respond to them. We do not have any of that either. If you could, would you respond to Mr. Daigeler's question?

Mrs. Meslin: Mr. Daigeler, first of all the difference between one, two and three. One is our notification to the ministry that we are about to start an investigation. In that notification, we outline the basis of the complaint so that they understand what it is we are going to investigate and we ask them to respond. If it is, as I said, an agency that has had nothing to do with us, it may take them a while to understand what that means; whether it just means, come ahead and look at all the information, that is the response, or whether it means, we have read the complaint and we would like to give you the reasons why and a complete answer to the complaint. It might mean something else. The first one is a notification. How long does it take for the ministry to respond to that preliminary notification that we are going to investigate? We have not started anything; we just tell them what the complaint is about.

Mr. Daigeler: By that do you mean substantive responses?

Mrs. Meslin: No, any response. That is how long it takes for them to write back to us after they receive this notification.

Mr. Daigeler: I am asking this question to compare it to the response time that we have ourselves. I guess it is comparable.

Mrs. Meslin: Number 2, section 19(3): After we have completed an investigation, we send the ministry tentative recommendations and conclusions and that is the response time that they have to those tentative recommendations.

Number 3 is our final report. We issue it with final recommendations and it is the response time from the ministries to that.

Mr. Daigeler: What does it all add up to in term of months?

Mrs. Meslin: Depending on—

Mr. Daigeler: Usually, I would say around six months or so. Is that what I am looking at here?

Mrs. Meslin: We have given the committee averages and we have said that, I think, it is about a three-week response. Just a minute. I think I have it. I think we are saying about four weeks for a section 19(1) response, closer to four months for a section 19(3) response and something like three and a half months—these are averages of course—for the final report, the section 22.

Dr. Hill: I might add, we do not sit back idly and wait for them to respond. If the times come up, we write them, we call them and we cajole them, and it is difficult, especially when they know that you can not put them in jail. You cannot do anything that is really punitive to them. We have to call on their goodwill, but we go after them and keep going after them. We just have to wait until those government agencies decide to write back to us.

Mr. Daigeler: I must say, in defence perhaps of the government agencies, I notice that just the mail, the mere delivery, usually takes one week to get there and one week to come back, and that is within Toronto. So you already have two weeks there. If you go outside Toronto, you have another two weeks. You have four weeks just for delivery.

Madam Chairman: Any further questions? Mr. McLean? No.

Mr. McLean: No. The morning went very well.

Madam Chairman: I am glad you think so. I do not think I have any more. Good. I think that we have concluded our questions on the statistics part, and we thank you very much for preparing the information for us.

We will not be meeting as a committee next Wednesday morning but we will be meeting*the following week. You will have in your boxes next week the draft report of the committee. I would appreciate it if you would take the time that we would normally meet to review the draft report and be prepared in two weeks time to come with good recommendations, anything that you feel is missing from the draft report or any additional information that you would like to add to it. We will not meet next week, but we will meet in camera in two weeks' time. Dr. Hill?

Dr. Hill: I do not want to sound like a record, Madam Chairman, but I would just say once more that anything you can do in your report to push the idea of a federal ombudsman would greatly assist our work and assist the work of this committee because, as I said before, we are spending a lot of time handling federal things, for people who really need help, that we should not be handling. A federal ombudsman is absolutely needed.

On the provincial level, all ombudsmen have come together to meet on this and they have all agreed that this is one of the things there is no contention about. Again, we would appreciate any assistance you can give us in your report with respect to a federal ombudsman.

Mrs. Meslin: Madam Chairman, will you require our presence in two weeks, or will it just be for discussion of the report?

Madam Chairman: It will just be discussion of the report of the committee in camera. Your attendance will not be required, although I am sure Catherine Evans will be in contact with you over the next little while if she needs any information.

We will meet in two weeks.

The committee adjourned at 11:26 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1986-87

WEDNESDAY, MAY 25, 1988



STANDING COMMITTEE ON THE OMBUDSMAN

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Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
McLean, Allan K. (Simcoe East PC)
Philip, Ed (Etobicoke-Rexdale NDP)
Pollock, Jim (Hastings-Peterborough PC)

Clerk: Decker, Todd

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Ministry of the Environment:

Posen, Gary S., Deputy Minister
Jackson, M. B. (Jim), Acting Director, Legal Services Branch
Koorshed, M. F., Counsel, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, May 25, 1988

The committee met at 10:11 a.m. in committee room 1.

ANNUAL REPORT, OMBUDSMAN, 1986-87

Madam Chairman: OK, we will call to order. If you gentlemen could please come to the table, I would appreciate that. We are so pleased that all three of you were able to attend this morning. I understand that you have contacted my office and are ready to explain or set out some guidelines or ideas of what you in the ministry are prepared to do to solve this case, or attempt to solve this case, in the next little while.

Mr. Posen: I sincerely regret the circumstances in which I and members of my staff are appearing before you today. I want to assure you that it is the policy and practice of the Ministry of the Environment that its staff will attend at any meeting when requested by a standing committee of the Legislature or to make alternative arrangements acceptable to that committee, will respond promptly to any request from a standing committee for information and will live up to any commitments given to the committee within the agreed time frame or seek alternative arrangements acceptable to the committee.

Unfortunately, the ministry's record with regard to the file before you falls considerably short of its stated policy and practice. Most regrettable is the failure of Mr. Jackson and myself to appear before the committee on May 18 in response to Mr. Decker's letter of May 4 to Mr. Jackson. The mail log in the legal services branch does not indicate receipt of this letter. The mail log in my office records that my copy was received on May 6. However, my staff did not notice that I was included in your request.

Mr. Decker's letter of May 18 to me has provided the occasion to review the recent history of this file in terms of both substance and process. I have used this opportunity to discuss with Mr. Jackson and others the sequence of events which has brought me here today. We have agreed that our performance in this regard has been unsatisfactory and for this we sincerely apologize. The Ministry of the Environment sets high standards for its staff and expects them to achieve a high standard of performance. For my part, I have reminded those involved of our policy and practice with regard to committees of the Legislature and of our strong expectations of them. I am confident that this situation will not be repeated.

Finally, with regard to the substance of the issue before you, I wish to inform the committee that revised terms of adjudication for the claim for interest have been prepared and will be sent to [name withheld] later today. It is indeed unfortunate that so simple a matter has taken us so long to accomplish.

Madam Chairman: Yes. There was reference there to a company's name. Could you have that deleted from the record, please? I forget what we were using, but I think "the company" would be appropriate.

We accept your intention that you had intended to comply with what we had said. We were not here last week, but it was brought up in Hansard

reporting that it was estimated it would take about a week to commence this process, and I believe that was at the end of February. We did have other correspondence that actually did not come to your attention, but one dated April 13, 1988 was addressed to Mr. Jackson. The subsequent correspondence which ensued because of a lack of reply to that one, which was the May 4 correspondence which you were duplicated on, and then, of course, the May 18. So there has been a considerable amount and we would just like, if anything, to bring it to your attention so that this does not occur again. We appreciate the efforts that you have undertaken in the last week.

Mr. Bell: Mr. Posen, can you give the committee, I guess I better call it a commitment, with a time frame as to when the matter will, in terms of what is required to set this arbitration process in motion?

Mr. Posen: OK.

Mr. Bell: Let me finish. Back on March 1, and I am sure you have reviewed the transcript, there is a description by Mr. Jackson of the matters that are required; first being the offer presented. We discussed a time frame. That could be drafted and submitted or served on the party in question within a week. Can we have that same commitment for now?

Mr. Posen: In response, we have, in the circumstances, just squeezed the time frame. The letter that will be going to the claimant in this regard suggests to him that an independent adjudicator be appointed from outside the civil service to adjudicate whether interest should be made payable on the principal awarded originally. If the answer of the adjudicator to this question is in the affirmative, then the rate and the amount should be determined by the adjudicator.

There are three names provided to the claimant to consider as the adjudicator in this case so that as soon as this letter is received I think we can handle the case relatively expeditiously, depending on the response that we receive from the claimant. It is my understanding that the offer of adjudication and the naming of an independent adjudicator is the course of action that was recommended by the committee.

Mr. Bell: Further as we discussed on March 1, will you, on behalf of the ministry, undertake to keep the committee, through the Office of the Clerk, advised of all developments as they occur?

Mr. Posen: Certainly. We will be happy to copy you on the correspondence and to provide you with reports on any oral conversations that there are in this regard.

Mr. Bell: That is probably the best process.

Mr. McLean: I just want to say that I really hope we do get on with this because it has gone on far too long. I am very disappointed that commitments that we had previously from Mr. Jackson were not followed through. If you were in the position of the people who are asking for the adjudication to be done, you would certainly want it done yourself. I know that they do, and I know that you would. All I am saying is I just hope that it can be done as expeditiously as possible, that the claimant has a fair and just hearing and the matter will be resolved. How long do you think it would take to have the adjudicator appointed and will there be a waiting period after they accept whoever is agreed to?

Mr. Posen: I think there are three names provided. Assuming that this offer is accepted and one of them is chosen, it is just a question then of finding a time that is mutually acceptable to the adjudicator and the claimant. We will be available at any time that is mutually convenient to them.

Mr. McLean: Have you been in this position before? Have you ever done any of this before? I am just curious as to how long the whole process is going to end up taking.

Mr. Posen: Mr. Khorshed was one of the solicitors in our legal services branch.

Mr. Khorshed: Actually, I was involved in the original hearing of this matter. As far as the time period is concerned, I think the basic concept can be accommodated in one day. There should be no reason why it should go beyond a day, but that is also left to the counsel for the claimant.

The other factor is the availability of the specific adjudicator chosen by the claimant. I cannot be certain as to a particular date, but I do not anticipate, in the case of most of these people, any great difficulty in obtaining that. If it is not on this particular date, it would be in another week.

Mr. McLean: Would you be looking at two months in total for the whole process to be concluded?

Mr. Khorshed: Apart from any time period that the claimant might require, I should have absolutely no difficulty with that.

Mr. McLean: There is not much more that I can say. The fact is it is moving ahead and I am disappointed that it is taking so long. I know we all are. It is unfortunate we had to call you back to do it, which you have indicated in your opening statement. I just hope now that we can get on with the process and get it done.

Madam Chairman: I would also just make a comment that if the claimant does choose an arbitrator and if it seems like an unreasonable length of time before the arbitrator they have chosen will become available, then I would suggest that you give the claimant the alternative of going to the other two, because time may be of the essence at this point for the claimant. If it seems like an unreasonable length of time, three or six months, before this person becomes available, perhaps the claimant should be given an opportunity to choose another.

Mr. Posen: Agreed.

Mr. McLean: I just want to let you know that I will be in touch with the claimant and I will try to keep him informed. I will be finding out where the process is and how it is moving. I do not want to go through what we have gone through in the past.

Madam Chairman: Anything further? Great. Well, thank you very much for coming this morning. We really appreciate that. We look forward to not seeing you again in the near future.

Is there anything else on the report for the record before we go in camera?

I am just going to put the subcommittee report on the record, if you could hold on a second. OK, go right ahead.

Clerk of the Committee: The subcommittee on communications from the public met this morning and considered three cases. With respect to Mr. and Mrs. S, the subcommittee, after reviewing the file, agreed that the Ombudsman's investigation was thorough and adequate and declined to take further action.

With respect to Mr. M, after reviewing the file the subcommittee was advised that the Ombudsman had performed a certain additional task that the subcommittee had requested the Ombudsman to do. The subcommittee is now satisfied that the investigation was full, thorough, and complete and declines to take any further action.

The subcommittee directed the clerk of the committee to obtain certain additional information from one complainant, and that matter will be brought before the subcommittee at a future meeting.

Madam Chairman: Although you do not have any of the specific details of the cases, is there any comment on any of those decisions? We hope to include a condensed version of that in our draft report.

Yes. OK, well thank you very much. We will put that in the report so it is updated.

We have a number of other individuals who have come forward, but there is still a lot to prepare before they can be considered.

Is there anything else before we go in camera? Everybody is so quiet this morning. Wakey, wakey. We will go in camera now.

The committee continued in camera at 10:23 a.m.

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B-22

STANDING COMMITTEE ON THE OMBUDSMAN

ORGANIZATION

WEDNESDAY, JUNE 22, 1988

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Carrothers, Douglas A. (Oakville South L)
Charlton, Brian A. (Hamilton Mountain NDP)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
McLean, Allan K. (Simcoe East PC)
Philip, Ed (Etobicoke-Rexdale NDP)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Collins, Shirley (Wentworth East L) for Mr. MacDonald
Miclash, Frank (Kenora L) for Mr. Carrothers
Poole, Dianne (Eglinton L) for Mr. Elliot

Clerk: Decker, Todd

Clerk pro tem: Carrozza, Franco

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, June 22, 1988

The committee met at 10:12 a.m. in room 151.

ORGANIZATION

Madam Chairman: I call this meeting to order. Today, as I have discussed with many committee members, we are just going to deal with organization.

We now have approval for the budget we submitted to the Board of Internal Economy. The expanded-jurisdiction hearings and the travel we indicated we wanted to do to complete the expanded-jurisdiction hearings have been accepted. We were a little up in the air as to whether we would be able to do that. That has been approved.

In fact, our budget was approved in its entirety, with one amendment, and that was the international ombudsmen's conference in Australia. We had requested that the entire committee and two staff attend that in October. The Board of Internal Economy approved one member from each party and one staff member to go. That was the approval handed down by the board. Perhaps we can discuss that in particular later on in the agenda.

First, for those who are not aware, our dates for the committee are the week of August 8, the week of August 15 and the week of August 22. That is three weeks, from August 8 to August 27, and the last week of September, which is the week of September 26. We requested four weeks. These are not the precise weeks we requested, but they are what were available for us to sit, and we have accepted those.

What I would suggest, and what we have discussed with the Ombudsman, should be the agenda for those weeks is as follows. As you are aware, the Ombudsman is tabling his annual report at the end of June. He will be prepared to deal with the recommendation-denied cases and anything that comes out of the report in the week of August 8.

We have made him aware of some of the items that were in our report, which was tabled last Thursday in the House. Hopefully, his report will take into account some of the recommendations that we made as a result of last year's report, which he tabled.

Mr. Philip: May I ask a question on that? I gather that is the long weekend, is it not?

Madam Chairman: No. The long weekend is the week before that.

Mr. Philip: Oh. I am sorry.

Madam Chairman: We have a full week then. I would suggest that we start the Monday afternoon and proceed through. We will not have to sit on Fridays, if that is the way the committee wants it.

Ms. Poole: Is it correct to assume that those hearings on August 8 would be in camera?

Madam Chairman: No. Those are not in camera for the week of August 8.

Ms. Poole: Are they public hearings when somebody is contesting a decision of the Ombudsman and brings it to this committee?

Madam Chairman: That is correct.

Mr. Philip: No. They are not contesting the decision of the Ombudsman. We are examining when a ministry is contesting the decision of the Ombudsman. No one comes before this committee to say that the Ombudsman made a bad decision.

Ms. Poole: I see.

Madam Chairman: That is done by subcommittee in camera.

Ms. Poole: Is the complainant's name protected so that that is not revealed at the time?

Madam Chairman: That is correct. The parties who are before us are the Ombudsman and the ministry which has denied the recommendation of the Ombudsman. There is anonymity in reference to all the persons.

The only part that goes in camera is the actual decision-making process. That goes in camera. On most occasions, the committee can make a decision within half an hour. Sometimes it does go longer than that, as we have found out, but generally it is not so long.

Ms. Poole: Thank you.

Madam Chairman: For about an hour or two hours on the Monday, our counsel will sometimes do a preliminary briefing before we commence. That would be in camera as well, but generally the whole week is open to the public.

Mr. McLean: You say the week of August 8 you are doing cases here?

Madam Chairman: Yes.

Mr. McLean: What are you doing in the weeks of August 15, August 22 and September 26? Do you have a schedule?

Madam Chairman: I would suggest the cases for the week of August 8, towards the end of the week, if time permits, because my understanding is there may be only four recommendation-denied cases. So we may be able to get through those quite quickly.

I would suggest towards the end of that week of August 8 and the week of August 15 we should meet with the Ombudsman and the ministries involved to discuss the areas of expanded jurisdiction, in their view, and the Ombudsman's dealing with that. The remaining part of the week of August 8 and the week of August 15 would be devoted to speaking with the ministries and the Ombudsman's office.

The week of August 22 we should commence the hearings on expanded jurisdiction. In fact, if time permits towards the end of the week of August 15, we might be able to get one or two days of hearings in Toronto, but I do not anticipate any travel the week of August 15.

Mr. McLean: That is great. You will be travelling in the week of September 26?

Madam Chairman: The week of August 22 and the week of September 26.

Mr. McLean: Yes, but mainly September 26 is travel?

Madam Chairman: And the week of August 22. I would envision that most of that week would be travel as well.

Mr. McLean: When did you plan on travelling to Winnipeg, Saint John and that area? The week of September 26?

Madam Chairman: I would think that New Brunswick would wait until the week of September 26. For the week of August 22, I think as you will recall, the four other places outside of Toronto that were approved were Ottawa, London, Thunder Bay and Timmins.

There is a natural hop from Thunder Bay to Winnipeg, but I think we have to contact the Ombudsman's office in Winnipeg to determine whether that would be a convenient week for them, first of all. Second, our assumption is that Timmins and Thunder Bay will be popular places for expanded-jurisdiction hearings to commence. But I think if we get a low amount of people requesting our attendance there, then we may very well not have to travel to those locations if there are a few. Perhaps travel for them to Toronto might be better.

Mr. McLean: That is right.

Madam Chairman: I would suggest that the week of August 22, if required, we would go to London, Ottawa, Thunder Bay and on to Winnipeg, and then leave something like Timmins and Saint John for the week for September 26.

Mr. Philip: September 26 is Nova Scotia, did you say?

Madam Chairman: New Brunswick.

Mr. Philip: I mean New Brunswick.

1020

Madam Chairman: So travel would be confined to the week of August 22 and the week of September 26. The other two weeks would be in Toronto.

Mr. Philip: Do I take it, then, that on August 15 we would start off with kind of a research briefing for a day or two?

Madam Chairman: In fact, for the week of August 8, if we finish the recommendation-denied cases within three days, we will have one more day. I would suggest we might commence the briefings then. We have three groups that are going to be briefing us. One is our own staff, the second is the Ombudsman's office and the third are the various ministries that touch on the three areas of expanded jurisdiction. Those will go in, in order, commencing whenever we finish the cases denied.

Mr. Philip: I know this is not your problem, but it may be Diane's problem and mine; it will not be Carrothers's because he is on the standing committee on public accounts. There is a conflict there. I was planning on

having a substitute in here for recommendation-denied cases, because I am on the standing committee on administration of justice for eight weeks of hearings. The problem is that if you start your briefings in the week of August 8, it causes some problems for me. I do not know whether you are on both committees too and have the same problem, or are you just here?

Ms. Poole: Actually I am just here as a substitute today so I will not have that conflict.

Madam Chairman: Is your question in relation to this one or can I reply to this one first?

Ms. Poole: I did not have a question. I think Mr. Philip just wanted to know whether I had a conflict with the justice committee. But I do not because I am not actually sitting on this committee.

Mr. Philip: I am sure, if it is the wish of the committee to start the briefings on the week of August 8, as long as I have notice, then whoever is substituting for me here I will just send in to the justice committee for a day. Then I will come in.

Madam Chairman: I think what we are looking at at the moment is that you know there may be a possibility of negotiation. Our four recommendations in that case may very well go down to three or two, or in fact stay at four. Our usual habit is two cases per day but that does not always occur either.

If we start on Monday afternoon and we have the Ombudsman also do a summary of his annual report, there is a very slight likelihood that on the Thursday of that week we might be able to start into the expanded-jurisdiction briefing. It is optimistic, but if we are available and the Ombudsman and his staff are ready to go, then we would have to seize that opportunity. We do have only four weeks in all this summer.

Mr. Philip: As long as the clerks keep in mind all of the players so that they can get us in the right position.

Madam Chairman: Yes, but the primary briefings will occur the week of August 15.

Mr. Bossy: I have some concern when I hear you say that we are sitting Monday to Thursday.

Madam Chairman: Monday afternoon from 2 p.m.

Mr. Bossy: You are allowing travel time for those people who are at a distance, and the same thing on Thursday?

Madam Chairman: That is correct.

Mr. Bossy: Because we have always had at least the opportunity that we did not have to come up. In my case, if we have a morning sitting, I would have to come up on Sunday. It is bad enough to be away, but we have not experienced that before. So at the earliest it would be 2 p.m. on Monday and at its latest, 12:30 p.m. on Thursday?

Madam Chairman: No, I would suggest 4 p.m. or 5 p.m. on Thursday.

Mr. Bossy: Then I have to look at a substitute for part of the week.

Otherwise, I would have to stay here until Friday. Most of the time, a lot of the meetings are set up to accommodate the people in the vicinity of Toronto, disregarding those at a distance. I think that has to be taken into account.

Madam Chairman: Does anybody object to meeting Monday afternoon?

Mr. Bossy: I have no problem with Monday afternoon.

Madam Chairman: On Thursday, certainly we can expedite our business as quickly as we can and should not drag on unnecessarily; I think it will be a short day. I think meeting just on Tuesday, Wednesday and Thursday is not going to get the business we have on the agenda done in four weeks.

Mr. Bossy: I would sooner take an extra week.

Madam Chairman: We do not have an extra week. We want to deal with the jurisdiction problem before the Ombudsman resigns from his position.

Mr. Philip: May I ask why the selection of those particular cities? Is there any particular rationale? I understand why you would want to go to London, Ottawa and Winnipeg, but are there other areas that have expressed interest?

Madam Chairman: As I recollect, you and I were on the subcommittee that decided on these locations. Mr. McLean and Mr. Elliot, who is not in attendance, were as well.

Mr. Philip: That was a long time ago. I just wondered.

Madam Chairman: I think the solution was that we—

Mr. Philip: We needed something in the north.

Madam Chairman: With Timmins and Thunder Bay, we felt it would give an east-west coverage. Certainly, we have to wait until we have the approval for that amount of travel or that expenditure, and we should wait and see what kind of submissions come in, but we have to firm ourselves to areas to start notifying people as to where we will be on what dates after we advertise and get responses.

Mr. Bell: I have two matters. To address Mr. Philip's concern as for the briefing sessions, let me tell you what we are currently doing for you in the area of briefing. We are preparing and organizing materials for you which we will have available for distribution some time prior to the week of August 8. If any of you have any time, you can review it beforehand.

It will consist of a reorganization of the three basic questions that you put a long time ago: Should there be expanded jurisdiction? Is there need? If so, by whom? I think those questions have now distilled down to one revolving around the three areas of the children's aid society, public hospitals and HUDAC.

The material will include an analysis of the Ombudsman's current jurisdiction, with an explanation of why he does not have the jurisdiction over the three, some description and analysis of the three areas, statutory and otherwise, so that you are able to determine their context before these hearings start.

There will be further materials, as best we can accumulate in the time permitting, from the other jurisdictions with which you are going to have discussions about how things are organized there, essentially a package of material that will give you a fairly good and thorough written briefing exercise.

It is our intention, prior to the meetings of the week of August 15—that is, with the Ombudsman and staff and with the ministries involved—to take you through that material. We are not going to have a reading session together, but we will take you through it and highlight what is salient, etc., so that everybody has a concurrent insight and understanding of the various issues.

Mr. Philip, if you miss that briefing session, I do not think it is the end of the world. You can always catch up. There will obviously be some overlap between what the ministry people tell you, what the Ombudsman tells you and what the material has told you, but there is nothing wrong in getting it from two locations.

Mr. Philip: That is the first few days of August?

Mr. Bell: My preference is to give you that briefing session as early as possible. If it is possible to do it on the Thursday of the first week, then I think that is when it should be done. The chances are, I think, fairly substantial that I will not be with you for any or a significant portion of the weeks of August 15 and August 22. I have some other commitments that I do not believe I can readjust. I will make myself available for the week of August 8, but I think those latter two weeks in August are in absence of counsel. I want to be available for you for that briefing session, because I think if I do a job there, then the need for me has been reduced.

1030

The other thing we have done is we have already met with the Ombudsman's staff and will be meeting further with them to, if you will, give them direction on the type of briefing session they should be giving you and will give you. Needless to say, it will be more than the annual or biannual, "Let's have a meeting around my boardroom and have sandwiches and coffee," where we talk in very general and not substantive terms about what the Ombudsman's office is.

We have indicated to them that this committee will be interested to see really on a hands-on basis what that office is, how that office operates and how that office perceives it is going to be able to cope with any expanded workload respecting any or all of the three areas. You will recall that study Dr. Hill tabled a couple of years ago analysing the three areas. There was some statistical analysis and projection by the office of what additional workload would be created.

I have told them I think that is a very conservative estimate, that in fact any one and certainly all of those areas will have a more meaningful impact on the current staff complement, etc. I have asked them to reflect on that and to address you on that issue as well. We are working behind the scenes.

As for the ministry people, I take it you will want me and other staff members minimally to touch base with the people so that they have an idea what to address when they appear before you that week. I guess, Mr. Philip, if you

miss the one of August 8, if it happens then, there is no problem in catching up during the week of August 15.

Mr. Philip: Do I take it that the ministry people are here to deal exclusively with the contents and not necessarily to give a position as to whether or not they favour extended jurisdiction?

Mr. Bell: My preference would be to ask them to do it all at once, in terms of any explanatory matters that may be appropriate and necessary for you. Subject to your direction, rather than call them back again, we might as well get their positions out and known as part of your record to have for consideration, as appropriate, later. That is how I propose to raise matters with them.

Mr. Philip: We are going out there to the public and asking people where they stand on extended jurisdiction. If we have a ministry come in and take a hard line against it, I do not know whether that in some way prejudices our hearings or whether it simply gives us the arguments of whoever is opposing it to throw out there to the groups advocating it and ask them to give a retort. I am open on that, but members of the committee might have some opinions on it. I am not quite sure.

Mr. Bell: Then I will shut up. I would think if any of the ministries involved are in opposition and so state at the early meeting, it gives persons and institutions coming afterwards a maximum opportunity of knowing what that position is and of preparing their submissions accordingly. Also, the converse is true. If a ministry—for example, the Ministry of Consumer and Commercial Relations—were to come out and speak favourably of the Ombudsman's jurisdiction over HUDAC, it would give those in opposition an opportunity. It really does not bother me. It has to come out one time or another before your hearings conclude, and the sooner the better I think.

Madam Chairman: Any comments on that point from other members? Any comments about what we have dealt with so far, the scheduling and what we will be dealing with and how?

Mr. Lupusella: I have a question about the scheduling. Was the scheduling decided by the subcommittee or was it a discretionary decision to set up these dates?

Madam Chairman: The House leaders and the whips met and provided us with these dates. The initial request was set up by the subcommittee in that those who were on the committee were on at least two committees and we were trying to juggle the main critics from each party and their other obligations. For instance, Mr. McLean is the chairman of another committee, and we were trying to accommodate him and Mr. Philip, who is the chairman of another committee, so that they could, in most instances, attend both or have some obligation there.

As it turns out, because Mr. Philip is on the standing committee on the administration of justice, which will sit virtually the entire summer, accommodation was not available. In fact, the weeks we asked for were not necessarily the weeks we received, and it was a matter of giving up one or two of our weeks or taking alternative weeks. That was negotiated between myself and the whip, as I think was done with other chairmen.

There was a problem. The weeks we had requested in September had six requests for committees during those weeks, and they were not prepared to let

all of us sit during those weeks. So what was done was some accommodation just to find us some weeks to sit, in the end.

Unfortunately that means, as I understand it, Mr. Lupusella, you have a conflict in our first week. It is unfortunate, but we were just not being provided with any other weeks. I think we have to make the best of what we have.

Mr. Bossy: Two of the four weeks we have, really, we are travelling.

Madam Chairman: That is right.

Mr. Bossy: So as far as the decision is concerned, there is no problem in us occupying any part of this building for meetings.

Madam Chairman: That is correct.

Mr. Bossy: There was also discussion about whether we are going to the Ombudsman's office also for a meeting.

Madam Chairman: The Ombudsman's briefing may very well be at the Ombudsman's office.

Mr. Bossy: So that it is strictly to accommodate people.

Madam Chairman: That is right. There are not enough people in the opposition parties to man all the committees.

Mr. Bossy: That is what I have to assume.

Madam Chairman: If they have six committees sitting simultaneously, it would not be possible to have one from each party, the bare minimum.

Mr. Bossy: And some want to travel on each committee; is that the idea?

Madam Chairman: Pardon?

Mr. Bossy: Some want to travel on each committee so they are gone all summer travelling.

Madam Chairman: That is an assumption that may be correct or incorrect.

Mr. Philip: Certainly everybody is trying to get substituted on to the standing committee on the Legislative Assembly.

Madam Chairman: The other thing is, I think we should perhaps go ahead with advertising immediately, as we had agreed during our sittings, which I believe was in every daily newspaper that is English and one French daily newspaper. I believe we are going to investigate doing it in one native paper as well, in the north.

Mr. Lupusella: I have another question about the scheduling of travelling. When we go to Timmins, Thunder Bay, London or Winnipeg—

Madam Chairman: Do you have any suggestion?

Mr. Lupusella: No. My particular question is, are we coming back to Toronto, or are we going to be away for three or four consecutive days until we complete the scheduling of travelling? What kind of setup are we going to have?

Madam Chairman: I think we are going to have to wait until it is arranged but, for instance, it would be better to go from Toronto to Ottawa and back and perhaps complete it in one day. On the others, Thunder Bay is a natural stop on the way to Winnipeg. Perhaps that way we could expedite our travelling: it would be a stopover; we would not return to Toronto. In fact, we would not only save money; we would save time. I think those details will have to be worked out.

Mr. Philip: I suggest that in addition to the advertising, you turn out a press release on behalf of the committee over your signature, showing what it is we are doing, where we are going and when. Send it to the press gallery here and also to the local papers in Thunder Bay, Ottawa, London and Timmins—not Winnipeg—as well as some of the other northern newspapers, so that people up in those communities will get it twice. If they miss the advertisement, they may get the news story. It is free advertising for the committee.

1040

Madam Chairman: Any objections to that by the committee?

Mr. Bossy: Just a further question concerning content. I thought we had discussed earlier that there were jurisdictions and it was part of our inquiry to find out more about the jurisdictions where there happens to be an Ombudsman doing work. Is Quebec not a jurisdiction where there is some dissimilarity to what is being done in Ontario?

Madam Chairman: I think that is why we selected Manitoba and New Brunswick, because they were dealing with areas that we are considering, but each was not dealing with all three areas that we are considering. In fact, each Ombudsman—

Mr. Bossy: So we have picked New Brunswick as one, and Manitoba.

Madam Chairman: New Brunswick and Manitoba, because they were more in line with what we are considering; they had dealt with one or more of the areas we are considering. So we will set up some meetings and see when it is convenient for them to meet with the committee and discuss their experiences in the area of case load and perhaps the problems.

The other thing is that I just wanted to inform the committee that I noted that the federal government, as many of you have probably been seeing in the newspaper, has referred to the fact that it is considering a federal Ombudsman. In fact, they were narrowing their scope, and I think it was introduced yesterday in the House of Commons, but to just bank charge it.

I have sent along our Hansards, which recommended a wider scope than that, and said that we would be sending along the Ombudsman's report as well. I received a response to that. I am not sure whether it answered my letter, but it said they would be looking forward to the report wherein we made that recommendation.

Mr. Philip: Did you recommend me for the job?

Madam Chairman: No, I did not, Mr. Philip; but we still have the opportunity to consider that.

Is there anything else? I have one more thing on our—

Mr. Philip: There was one opportunity to cause another by-election, and you missed out on it.

Madam Chairman: I will not touch that.

Mr. Philip: Can we take that out of the Hansard?

Madam Chairman: Is there anything else before we deal with the last item?

Interjection.

Madam Chairman: Take it off the television.

Mr. Philip: I was only joking; I was only joking.

Madam Chairman: Is there anything else before we deal with the last item on the agenda? Any comments, suggestions? I think today was just to get an idea of where we are going in those four weeks so that people can make some plans. Certainly we will be following up in more detail in written correspondence.

The last item is the international ombudsmen's conference. As I indicated, the board did not accept our request for 11 members to attend the conference. We requested that the time away would be about 10 or 12 days, because the conference runs five days in length; it is from the 23rd to the 27th, inclusive. It is one person from each party, and I would like to hear if there are any objections from the committee to choosing one person from each party to go ahead and attend this conference on behalf of the committee and report back to the committee on their interactions with other ombudsmen.

Mr. Lupusella: I am going to appoint Mr. Bossy to go for the Liberal Party.

Mr. Philip: I always think it is divisive in a committee that is nonpartisan, be it public accounts or Ombudsman, to divide it up that way. It often creates tensions within a party or among people who are assigned to the committee as to who is the most important person because of his portfolio or because of his responsibility. I know you did your best to make that argument; at least that is what you cleared with me. But, for the record, I think we should strongly argue that committees either send everybody—

Mr. Lupusella: Or nobody.

Mr. Philip: —or not go this route, because it can be disruptive and divisive on the committee and it can be divisive among members of the committee of the same party sometimes.

Ms. Poole: I am not sure I support that last statement, simply because it is far more cost-effective to have a representative from each party who can report back and be almost like a fact-finding mission.

It certainly would be extremely expensive to send not only 11 members,

but also the clerk, for a 12-day period. While I am sure there would be many worthwhile things that would come out of it, I am not sure we could justify that expense. Also, I think the people have to know that we are managing the tax dollars wisely. Again, it is the appearance perhaps more than the reality, that we were being rather frivolous in sending perhaps 13 people for a 12-day period to Australia.

I think the compromise is a very reasonable one.

Madam Chairman: If I can just respond: First, the meeting with the board was about 30 minutes, and I think other chairmen were in there for two. We did address the question of whether a subcommittee—and since we did have a subcommittee that was working on a regular basis—attending this conference would be effective and nonpartisan in nature. I did draw to the attention of the board that the fact you have one from each party does not mean you have each party's view in the committee, in that we all do make individual decisions. I think it was the cost-effective factor that ended up making the decision, and there was some discussion on that way.

They are prepared to revisit the question only to the extent that the chairman and three members from caucus go, but they are not prepared to revisit the question of more than one from each party.

Mr. Henderson: I found myself agreeing with what Ed said and, actually, also agreeing with what Dianne said. I found myself looking for some kind of middle ground.

I can see the argument for having a representative of each caucus so there will be an opportunity for feedback to each caucus. I do not think the only alternative is to send 13 people. There might be some kind of middle ground, and it might be possible to work something out on the basis that the committee would cover a certain chunk of the expenses and one of our other budgets would cover another chunk of the expenses, so that there would be some sort of equity.

I agree with Dianne; I think sending 13 is a little bit excessive. I would certainly support the idea of sending the chairman and a representative of each caucus. But I would wonder if we could not reach a little further for a compromise. If you say they are not prepared to reconsider it, I guess they are not prepared to, but perhaps if we were to raise the question of alternative sources of funds from other budgets, they might be prepared to consider sending a few more.

Mr. McLean: I guess the compromise that I can see being made is the fact that you could send the full-time members of the committee and no substitutes. Lots of time you will get three or four or five substitutes on a committee, and I am sure the same would happen and there probably would not be more than six or seven who would be going.

I do not know whether you had indicated during your meeting with them if that would be a compromise or not, but perhaps that could be a compromise whereby the ones that can go are full-time members of the committee.

Madam Chairman: I started with that position. We did not really start with 11 members. We started with those on the committee who could attend, with no substitutes. In fact, that was our first decision. It was recognized that substitutes would not necessarily be of advantage in this particular problem of dealing with other ombudsmen around the world; a knowledge of what we do was imperative.

Mr. Philip: Al, I think, is ready to show up on these kinds of issues.

To me, the most cost-efficient way of spending tax money is in the professional development of the people who are making the decisions. When you look at the global budget, training MPPs is the most efficient way of making those people who are making the decisions, who are spending all these dollars, more effective. I say that as a former manager and as a former personnel trainer. It may be a training bias, but I really feel that on a committee that is nonpartisan—people from the same party will often have different views about a variety of issues—unless you get the whole committee to have a similar type of experience, then it is harder to get compromise and understanding, because the person who has had a particular experience can always say, "Well, if you had been in Australia the way I have been and had seen exactly what is happening there, then you would realize that I am right on this point, that point and the other point."

1050

That is one of the arguments I have always made about MPPs. I have never been defensive about MPPs travelling to other jurisdictions or taking in seminars, because the public servants will often use these arguments. They say: "You don't really understand the situation, because we were there. We visited this. We talked to so and so." Unless the decision-maker has had similar experiences—if you look through the Hansards, the first Ombudsman pulled that on the committee over and over again, God bless his soul. He was successful enough in simply pushing down members of the committee who had no arguments against him because they had not had those experiences.

If there is any way you can go back to the board and get something better than this—I do not know that you will—it certainly would be of benefit to the committee.

Mr. Bossy: I have to agree with Ed. My feelings towards travel are different, because I have not known it to be that productive; it is an outing in most cases. We would be served nearly as well if we delegated the clerk of our committee to go there and put together all the information that is distributed and bring it back for us to look at. We would have more for every member than if just one person from each party went.

I say that because I served on the standing committee on the Legislative Assembly, and we attended in Austin, Texas, where the state legislatures were meeting. It took everybody being there to be able to put together everything, to be able to draw conclusions of what their problems were vis-à-vis ours.

Also, the committee was out there to gather information on freedom of information. That was one of our trips, which was a valuable trip. I felt that was. But every member needed to be there; we could draw conclusions, having an evening meeting of the whole committee while we were there, while it was all fresh in our minds, and start drafting a report of the trip. We do not see that enough—reports of trips, what really has happened during a trip.

If we are going to have one from each party, I would just as soon not have anyone. The committee is established to function for a purpose here. Every person who serves on the committee should have equal status. At the same time, we are members in what we comprehend or what we feel towards the Ombudsman, because I am sure I do not feel the same towards the Ombudsman as Ed does. I am not comfortable with sending someone there to come back in a biased, personal way to report back to the other members, and I say that.

Madam Chairman: If I can respond to one of your points: Indeed, this is a conference, but I think that the main reason for the committee's attending it is the fact that there are going to be ombudsmen from around the world at the conference, and other standing committees. It is not so much the information that will be handed out; it is the discussions which can ensue with these various individuals on an informal basis that will provide us with some indication of what is happening around the world with ombudsmen and with standing committees and the different roles that they have.

Mr. Bossy: Should that be restricted to one person?

Madam Chairman: It is not restricted to one person in this particular instance; it is one from each party, and there would be some obligation on them.

Mr. Bossy: Yes, but that becomes one person within a party.

Mr. Chairman: That is right. This is where it stands now. As I say, if there is a direction, I think to discuss the other budgets that might be available with the Speaker might be a good strategy to undertake with the parties. But I discussed it with various people on the board after this decision was made, and I can assure you that the subcommittee—just the chairman and three other individuals—was as far as they are willing to consider.

This is the first time in recent years that they have considered travel as far as Australia, outside of Europe or North America, and they are not prepared to revisit the question at this time. They are setting precedents, and they are not prepared to set a precedent with an entire committee. They felt that since we did have experienced people on the committee, it would be fruitful to have some people go and attend.

Mr. Henderson: I am wondering whether to put this as a motion, but for the moment I am just making it as a suggestion and inviting comments. I suggest we say something along the lines of a statement that we feel a fuller participation of the committee in the conference would be cost-effective and worthwhile, that we are prepared to consider alternative budgets so far as the funding is concerned and that we strongly request that they reconsider this decision and look for some more flexible position on the matter.

Mr. Lupusella: If it will make it easier for you to make this particular point, I would like to bring to your attention that I exclude myself from travelling to Australia.

Madam Chairman: I am sorry?

Mr. Lupusella: I exclude myself from travelling to Australia; so do not consider me as part of the group.

Madam Chairman: You and I can stay in Toronto together, Mr. Lupusella.

Mr. Lupusella: OK.

Mr. McLean: That is what I indicated earlier on, that when it got right down to it, if nobody was allowed to sub on the committee, you would still only probably end up with six or seven people going; so I would think that would be a fair compromise.

Madam Chairman: We may all make a miraculous recovery and we may end up with 10 or 11 out of 11, and I think that is what they are looking at.

Timing is now becoming of the essence for this particular trip. The last day for registration was, in fact, March 15. They have extended this to now for the purposes of our committee. I think any longer delay would jeopardize the participation of our committee members and the possibility of arranging meetings with other delegations, so I think we have to press ahead.

If you want to make it a formal motion, Dr. Henderson, I would certainly be prepared to put something in writing to the board that we would like fuller participation, but I think in the end, given that we may be adjourning in the next two weeks or so and we will not have the opportunity meet again, we will have to be prepared to take a position on this.

Would you like to put that as a formal motion, about some kind of letter or presentation or opportunity to present to them again, although that may be very difficult, that we would request fuller participation in the committee and revisit the question of the full committee, with no substitutions, and that at present—Mr. Lupusella and the chairman are not going—we are already down to nine persons, and they should revisit that? But that is from three persons to nine.

Mr. Lupusella: Mr. Bossy indicated that he will not be willing to go.

Mr. Bossy: I would be willing to make a motion to sort of send a message to the Board of Internal Economy that—

Mr. Philip: Why do you not canvass the regular members of the committee? Then you would have a count as to who would be willing to go before you go in with that proposal. You may actually get it down to six or seven anyway.

Madam Chairman: I could undertake to do that, but if we are at nine, and we may know what we are doing later in October, at this date I think the alternative is one from each caucus attending.

Mr. Henderson: Maurice has moved it. Did it include the idea of alternative budgeting?

Madam Chairman: Mr. Bossy moves that in view of the decision by the Board of Internal Economy to restrict us to three people, the committee in its entirety travel outside this country or not at all; he further moves against attending the conference on the fact that we are restricted to serve, in other words, as the committee sees fit as a committee.

Mr. Henderson: That is a different motion than I had in mind. I was thinking of taking what we have and trying to go for more rather than—

Mr. Bossy: I will not be going, so I might as well put it on record. I will not go to Australia unless the entire committee goes.

1100

Mr. Philip: Let's take Dr. Henderson's motion first.

Madam Chairman: Would you say that yours is a formal motion? Would you allow us to vote on Dr. Henderson's motion first?

Mr. Bossy: I did not catch his motion.

Madam Chairman: My understanding is Dr. Henderson's motion was that we make a request in some form, probably in writing, to the Board of Internal Economy to request full participation by the committee in the Ombudsman's conference in Australia, look at more cost-effective measures of being able to attend and that they revisit the question. There was no question of the fact of all or none, so that in fact we would re-entertain the question of a subcommittee going if in fact they did not revisit the question. The chairman would go about looking to see how many individuals would be able to attend at this time.

Mr. Henderson: That is right. The idea was, along the lines of what Mr. Philip has said, that it seems to the committee to be a cost-effective use of scarce resources and that towards that we are willing to consider tapping other budgets; whatever ones are appropriate to be tapped. I do not know the exact ones.

Mr. Philip: I did not say that the Board of Internal Economy's decision was cost-effective. I said it was not cost-effective.

Mr. Henderson: No, no. That the trip would be a cost-effective way of spending money, in other words.

Mr. Philip: OK.

Mr. Henderson: We think it is a legitimate expense. That is basically what I am saying.

Ms. Poole: I just point out that we have, to my knowledge, three substitutes on the committee and I think we feel a little reluctant to vote on these motions simply because our own feelings might not reflect the feelings of the permanent members. I do not know if the balance of the committee would feel it appropriate that we vote on this motion. Obviously, we have the right to do so.

Mr. McLean: What the motion is doing is just directing the chairman to proceed further in the investigation and to report back.

Ms. Poole: I would feel quite comfortable supporting Dr. Henderson's motion. I would not feel comfortable supporting Mr. Bossy's motion. I think basically it would be cutting off our nose to spite our face. I think it would be very valuable, if the Board of Internal Economy would not want to revisit it, to still at least have three members, with the chair, attend. I think they could bring back very valuable information and I would be reluctant to see us deny the committee access to that information.

Madam Chairman: Is there any further discussion on Dr. Henderson's motion?

Mr. Lupusella: I am not particularly sure that we really need this motion. I think the wish of the committee, generally speaking, is for you to investigate other proposals and inquire about other alternatives to take into consideration that other members would like to go. If the board or the Legislative Assembly is willing to comply with the request for extra funds, investigate that and report to each member of the committee. Why do we need the motion for that? I am not willing to go anyway.

Mr. Philip: I do not see any problem with the motion. Even if there are substitutes today, I think what the substitutes should realize is that we rarely do not have a consensus on a motion in this committee—it is very rare; any more than to have a division—as well as on the standing committee on public accounts. There are very few divisions. But the permanent members of the committee, I think, are unanimous in our view and I just ask your support on this motion.

Mr. Bossy: I will withdraw my motion until we have clarification on the suggestion from Dr. Henderson.

Mr. Philip: Yes. I was going to suggest Mr. Bossy can always move his motion again if you are unsuccessful in negotiating.

Madam Chairman: As chair, I would prefer that Mr. Bossy move his motion after we vote on Dr. Henderson's motion so that we do have a position today because, as I said, we may not have the opportunity to meet again before the House rises. As you are aware, we need permission for time to sit when the House has risen.

If the board does not meet next Monday and make any decision on this matter, we will have indecision, and there is the pressing time of getting the registration forms in. We really lag considerably on this matter. If we do not get our registration forms in, it is going to be a moot point anyway. There are not a lot of positions available. They have entertained us and invited us, but they are not prepared to keep them open indefinitely. That is a problem.

I think we should deal with it now and not leave it open, so committee members who will be attending will know their position and know what is happening.

Mr. Bossy: Even though I made the motion, in view of the clarification that Dr. Henderson made on the basis of his motion, if we deal with his motion first, and that passes—I could agree with that one because it would lead to what I am trying to get at—if we agree with Dr. Henderson, there is no need to vote on my motion.

Madam Chairman: There may be no need. If you say that, that is correct. But your motion did have the added feature.

Mr. Bossy: I will withdraw my motion until we have a vote on Dr. Henderson's motion, because if that one passes and we are looking for more funds or more people to go, then I could take a second look at it.

Madam Chairman: The motion on the table is Dr. Henderson's motion. I think we have the gist of it. All those in favour of Dr. Henderson's motion? All those opposed?

Motion agreed to.

Madam Chairman: I will proceed with that.

Mr. Bossy, would you like to revisit, re-entertain your motion, or would you like it on the table?

Mr. Bossy: I can ask you to table my motion until you get the results. I would like to reserve the right to place a motion, but it will be narrower in scope. In view of the fact that if you are not successful, I would

make a motion that no one from this committee travels to Australia, if there is no expansion of the committee.

Mr. Philip: Are you putting that motion now, or are you saying that you are going to put it after you get the results?

Mr. Bossy: As I say, it is not the right time to place the motion because we do not know what the chair—unless you can already decide; you may know things we do not know. If you can decide that you are not getting anywhere on further funding from the board, or reconsideration, then—

Mr. Henderson: If the chairperson is unsuccessful, following on my motion, then the effect of Mr. Bossy's motion will be to, in effect, cancel the trip. I guess he is entitled to make that motion and then we can vote on it, and what happens happens.

Madam Chairman: The problem I have with Mr. Bossy tabling the motion and waiting until the results is that the board, as you are aware, does not meet on a weekly basis, I am not sure when it is meeting again, or when it will entertain this question. My problem with it is that if that is the motion, and if indeed the board rejects any idea of expanding our group, then I think at that point we are going to need some direction by the committee before August 8, which is the next time we are permitted to meet.

I think it would be inappropriate to wait until August 8 for us to formally disclose to the members what has resulted from the board's decision and if, in fact, it is that more committee members can travel, that is one alternative. If it is the alternative which is "No, we stand by our position," which is for the subcommittee to go, it will be August 8 before Mr. Bossy could revisit this motion, and it would be that date when we would be able to say no, nobody can go to Australia.

I think it would be an unnecessary inconvenience for many of the members of the subcommittee who might be approved to go. It would be for a period of eight or seven weeks that nobody would know what they were doing, and we would jeopardize our ability to participate in the conference.

I think it is important that we know when the decision of the Board of Internal Economy comes, if it revisits this question. We need to know what is the result of that, and I think it would be inappropriate to wait until August 8 to know.

Mr. Henderson: Are you ruling that either Mr. Bossy withdraws the motion or we vote on it?

Madam Chairman: That is right. That would be my ruling on that particular motion. I think if we do not deal with it today, it is inappropriate to deal with it on August 8.

Madam Chairman: That is right. That would be my ruling on that particular motion. I think if we do not deal with it today, it is inappropriate to deal with it on August 8.

1110

Mr. McLean: You are putting the members who are substituting in a very bad spot if you do that.

Ms. Poole: I am quite comfortable voting on that motion. I will not be supporting it. I do not know how the other members who are substituting feel about it.

Mr. McLean: Yes, but your colleagues who are the full-time members here maybe do not have your point of view. If you pass the motion here, then they have to stick with what your point of view is.

Madam Chairman: That is correct. I would be prepared to entertain a 10-minute recess for those who would perhaps want to get other members in the committee to vote on this motion, or any suggestions that are forthcoming from the members, but I think it would be inappropriate to wait for this decision on this motion till August 8, and that is what the alternative is.

Mr. Bossy: I have a real problem with this because there is a motion that was passed, and that I supported, for you to go ahead and deal with the Board of Internal Economy. Really, it puts me in a position whereby if you came back with good news—we will put it this way—that more of the committee can go to Australia, that could change my mind. But as it stands, I do not see the value of having just one from each party, and I go by past experience of trips abroad.

I also know that the Board of Internal Economy has pretty well made up its mind that trips outside of the continent are going to be very restricted. I believe they have made that decision. We are faced with that too. It is a decision on what value to the committee are the three members who would go and what value to the government—I mean to the taxpayers—of the expenditure of sending three people and any support staff? Is there any support staff? That was not mentioned.

Mr. Lupusella: If I may reply to this particular concern, I think it was general practice in the past to send just one person from the committee to this particular conference. That person would brief the members of the committee in relation to the content of the conference. I think the Board of Internal Economy was very generous to include one member of each party. I support that. I do not have any particular objection. I think they have been quite generous in allowing other members of the committee to participate to this conference, considering that only one person used to attend this conference in the past.

Mr. Philip: Mr. Lupusella is not correct on this point. This is an international conference which is held every five years. The last international conference was held in Stockholm and the whole committee attended, along with our Ombudsman, several of his staff, our clerk and our researcher. It is the whole committee that historically has always attended the international conference.

It is ironic that somehow because it is in Australia—if it were in Toronto, then you would have the whole committee attending. If it were in Winnipeg, you would have the whole committee attending. If it were in Stockholm, you would have the whole committee attending. If the conference is worth while, and if you look at the total cost of attending, hotel bills and everything, just those extra few miles as a percentage of total cost is very small in terms of our total budget. Historically, the whole committee has attended.

Ms. Collins: Madam Chairman, I think the problem I am having with this is that it seems to me that it is the right of any member of this

committee to give notice that he will be putting a motion. I do not think he should be forced into a position of either putting the motion or withdrawing it. As of today, I think you have the consent of the committee to go ahead and make arrangements for three people plus the chairman. Should Mr. Bossy in the future put another motion, which we have talked about today, that is his right. Then it is up to the committee to decide whether or not it is going to abide by the plans or support Mr. Bossy's motion.

Madam Chairman: Mr. Bossy has not withdrawn his motion. He did put a motion on the table. He asked that it be tabled.

Mr. Bossy: I withdrew my original motion. The intent behind my withdrawing was that I could support Dr. Henderson's motion to have the chairman go back to the Board of Internal Economy to see if there could be a position taken as to expanding the group that may go. I would not place my motion if there was an expanded group of the committee that would attend.

Madam Chairman: That means you have withdrawn the motion that was before us today?

Mr. Bossy: That is right. That is what I said in the original, but you asked me to place it so that a decision could be made today. I went to the extreme and placed the motion that no one would attend if there was no expansion. That is the decision you can make. It is a matter then of a decision on whether three people or four people would go.

Ms. Poole: Madam Chairman, might I make a suggestion? We have already voted affirmatively in favour of Dr. Henderson's motion. Could it not be that the status quo be preserved in that you will explore whether there is something you can do to expand the committee? If you are rejected by the Board of Internal Economy, then we can make tentative arrangements for the three members plus the chair to travel.

On July 8, if you have been unsuccessful, at that stage you can either cancel the arrangements or proceed with them. At that time, you might have a full committee here without three substitutes and people will certainly have an opportunity to revisit the problem. In that way, you leave all your options open. As long as your tickets are not made out, as long as you just have your reservations, you could make a decision—August 8, is that the time?

Madam Chairman: It is August 8, not July 8 as was in the record. I have no problem with that as long as Mr. Bossy withdraws his motion as he just indicated. The problem I had and what I understood was that he wanted to table the motion. We are always open for rediscussion. There is a distinction between the two.

Mr. Bossy: That was after you requested it. I withdrew my motion immediately in order to support Dr. Henderson's motion.

Madam Chairman: As long as we have clarification of that, Mr. Bossy, I do appreciate that. There is no need to pursue your matter any further—

Mr. Bossy: And your dilemma.

Madam Chairman: —but I do caution the committee, Mr. Bossy, that in the event this question is not revisited and we do have a subcommittee going, we would jeopardize our—I do not want to use the word "reputation," but we are going to proceed with making the registration. That, as I have said, is an

honour and not a right. Once we put this ahead, it will be August 8 before there can be any revisiting by the committee of the decision of the Board of Internal Economy. That is the problem I am dealing with.

Mr. Bossy: I would even consider the fact that when you have a final decision by the Board of Internal Economy, you make a telephone poll of the members. I would consider that. I would give you a decision on the phone.

Madam Chairman: I, as chairman, would not be prepared to do that. I would want the position of committee members on this on the record in a public meeting. I just would not be prepared to do that, Mr. Bossy.

OK. I will pursue Dr. Henderson's motion with the board. When I receive the result from the board, if it revisits this question, I will certainly express it to the committee members at that time.

Any further business? None? Then the meeting is adjourned.

The committee adjourned at 11:20 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
OMBUDSMAN'S RECOMMENDATIONS DENIED
MONDAY, AUGUST 8, 1988



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)

VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)

Bossy, Maurice L. (Chatham-Kent L)

Bryden, Marion (Beaches-Woodbine NDP)

Carrothers, Douglas A. (Oakville South L)

Henderson, D. James (Etobicoke-Humber L)

Lupusella, Tony (Dovercourt L)

MacDonald, Keith (Prince Edward-Lennox L)

Mackenzie, Bob (Hamilton East NDP)

McLean, Allan K. (Simcoe East PC)

Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella

LeBourdais, Linda (Etobicoke West L) for Mr. Carrothers

Tatham, Charlie (Oxford L) for Mr. MacDonald

Also taking part:

Philip, Ed (Etobicoke-Rexdale NDP)

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service

Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. Daniel G., Ombudsman

Meslin, Eleanor, Executive Director

Zacks, Michael, General Counsel

Morrison, Gail, Director, Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, August 8, 1988

The committee met at 1:10 p.m. in committee room 1.

OMUBUDSMAN'S RECOMMENDATIONS DENIED

Madam Chairman: OK, I call this meeting to order. Welcome back, and to our new people, welcome. You will learn what the Ombudsman is all about.

John Bell does not appear to be here yet, but I am sure he will come in his normal course of events. I would like to draw to your attention a couple of things first. You will notice our new seating. This is called the U seating, I think. When we are in room 151 next week we are going to have something called the octagonal seating. This is the standing committee on the Legislative Assembly's new approach to our interacting among one another. We are supposed to give them comments on how we feel about this. We cannot change it in the next three weeks, but we are encouraged to give them comments. Any comments you might have you can certainly pass through our clerk, and I am sure he will pass them on to the Legislative Assembly committee.

Also, for those who are not aware, we have a new clerk and a new legislative research assistant. Franco Carrozza is our clerk. For all of you who now think we still have Todd Decker, we do not; it is Franco, and he has been organizing our schedule for this month. We welcome Franco. Our absent person, who is just trying to find John Bell, is Jennifer Wilson, and she has replaced Catherine Evans, who had a big, bouncing baby girl, so we can now congratulate her as well.

The next thing is that we have our black binders. They contain all the material you are going to need and any supplementary material we will give out as we go along. I would just like to draw to your attention that right at the front of the cover is the agenda for the first two weeks. It is not under a tab, it is right at the beginning. The third week we are going to be dealing with people coming before us on expanded jurisdiction. We have not finalized who is coming at exactly what time yet. As soon we have those details, we will certainly provide you with them.

The only change to the agenda before you at this point is for Monday, August 15. It is page 5 of the agenda. It noted that we are going to be having our meeting in the Ombudsman's office. That is incorrect. We will be in room 151 all next week, which is the Amethyst Room. We had hoped to go to the Ombudsman's office and see the practical working of the Ombudsman's office; but, that said, we were concerned that we would not get on record the Ombudsman's position with respect to the expanded jurisdiction of the three areas we are looking at. We felt it would be better that we be here and that there be public disclosure of his position, and then people who were responding to it would have something on the record. So we are going to be in room 151 next Monday. That is the only change to the agenda at this point.

The other thing you should have before you—and if you do not, I am sure we can provide you with more copies—is the annual report of the Ombudsman. This was tabled, I think, towards the end of June, and Dr. Hill will be speaking to it today. If anybody does not have a copy, I am sure we can try to get you copies. Mrs. Meslin, do you think you could see if you have any extra copies of it available?

Dr. Hill: I will give you mine.

Madam Chairman: She knows it off by heart. I am sure that will be all right.

Dr. Hill will make a presentation to us on the actual report and will respond to any questions we have. Then John Bell, when he arrives, will be providing us with some kind of organizational matter for the next week and for the following weeks. Any questions?

Mr. Philip: May I ask a question on the agenda, Madam Chairman?

Madam Chairman: Yes, Mr. Philip.

Mr. Philip: Franco kindly supplied me with a copy of the agenda, and then I promptly managed to leave it in my other committee, but do I take it that the dates originally scheduled, even though there have been changes and we are not now going, it appears, to Thunder Bay and Ottawa, are still firm, that we will be sitting?

Madam Chairman: That is right. We are still waiting for people to respond both to the ad and to our personal letters. Indeed, they are still coming in and, although we made a deadline of the end of July, we are still trying to accommodate anyone who comes in and is willing to put a presentation before us.

In all, we have somewhere in the neighbourhood of about 16 groups or individuals, besides ministry and the Ombudsman, who would like to present before us. Others have contacted us that they do not want to appear before us but are willing to make some kind of submission in writing. We are leaving those open. We have two days open in the third week in which we may still travel, or we may stay here and accommodate people from outside of Toronto, but we just have not had any response from anywhere near Thunder Bay or Timmins to warrant our going there.

Mr. Philip: But you expect that in that third week we will in some way be occupied for four days?

Madam Chairman: We are fully occupied the Monday and Thursday of that week, the 22nd and the 25th. On the two days in between, the 23rd and the 24th, we are still booking people who want to deal with expanded jurisdiction. We anticipate that those will be rather full days.

Mr. Philip: OK.

Madam Chairman: We had about four or five groups contact us last week to appear before us. They are still coming in. The problem is that we not only did an ad, we also made a direct contact to people with a letter. Unfortunately, that letter did not get out until the end of July, so we are still hearing from them.

Mr. Philip: The only other comment I have is on the new seating arrangement. It seems to me that one of the things I have been advocating over a number of years is a change of the seating style for the standing committee on the Ombudsman, the standing committee on public accounts and the standing committee on regulations and private bills, all of which are nonpartisan. Now, suddenly, I see there is the opposition on one side and the Liberals on the other.

I am not sure that physically that leads to a very good nonpartisan committee. I recognize why that may be the case in the standing committee on administration of justice at the moment, but I do not think there is any need for it in the nonpartisan committees. I just do not like the dynamics I am seeing at the moment. Not that we are glaring at one another, but I do not think it leads to a nonpartisan committee.

Madam Chairman: We discussed the new seating arrangement. Perhaps if you would like to switch with a partner across the way, Mr. Philip, you could encourage the interaction between the two.

Mr. Philip: I will next week when I am on the committee.

Madam Chairman: Tomorrow we will not put the name plates out in advance, and we hope you will just find seating according to where you enjoy sitting. Traditionally this committee has mingled in its seating arrangements. This is unusual. We did discuss it, actually, before you came in, but not about the nonpartisan nature.

Mr. Philip: Since you are so nonpartisan in your chair, I think it would be an issue you would be sensitive to.

Madam Chairman: And that is why I am in the middle. Are there any other questions at this point?

Mr. Elliot: I think that last comment was well made, because the tendency until now was that the nonsmokers gravitated to one side of the room and the smokers gravitated to the other end. I think when we pick up our name tags next day that might be a good way to seat again.

Madam Chairman: Actually, I was going to suggest, Mr. Elliot—and thank you for reminding me—that if the smokers could gravitate out to the hall, it would be appreciated over the next three weeks. Sorry, Mr. Bossy.

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Mr. Bossy: Is that for the entire meeting? You are putting it in that context, are you?

Madam Chairman: For the portions of the meeting where one has to engage in an extracurricular activity called smoking, if you could do it outside of the room, it would be appreciated for a number of reasons. One is that, although we seem to have gotten a rather cool room today, I have noted that the rooms have been very warm, particularly the Amethyst Room. It has been hot and stuffy, and smoking has only added to the congestion of the room. So if people would try to refrain from smoking inside the room, I think it would be appropriate, anyway, given Madam Chairman's condition. She should not be around smoke.

Mr. Philip: I dare anybody to argue against that.

Mr. Campbell: We might have another case for the Ombudsman.

Mr. Tatham: Yes, we have him right here.

Madam Chairman: For those who are new, we have before us Dr. Hill, who is the Ombudsman of Ontario, and Eleanor Meslin, who is the executive director. We look forward to hearing your comments on your annual report, Dr. Hill.

Dr. Hill: I am pleased to be able to speak to you today. This may well be my last opportunity to address you as I proceed into the final months of my term as Ombudsman. Although I made my farewell address in my recent annual report, I am grateful you have given me this occasion to express my thoughts in person. I hope you share my feeling that we have enjoyed a very open and mutually helpful relationship. For my part, it was a pleasure getting to know you and working with you.

As you know, your committee is seized of the task of assisting the Ombudsman in fulfilling the mandate of this office. Your committee has consistently and strongly supported this office. For that I am very thankful.

Shortly we will discuss my recent annual report and those cases where the governmental organization refused to implement my recommendations. This is our most vital work. This is indeed what it is all about.

You are the last weapon in the Ombudsman's arsenal to implement Ombudsman recommendations. Your committee and your predecessor, the select committee on the Ombudsman, have almost always supported our recommendations.

The existence of a committee such as this is not a part of the process in most other ombudsmen's jurisdictions. In the past, the role of the Ombudsman committee has been a topic of some heated debate; but on the basis of my experience, I find that the advantages of your committee far outweigh any disadvantages.

Your consistent support of our recommendations has added credibility to this office. Such support implies that our recommendations are well founded and based on thorough and impartial investigations. Also, by reviewing our budgetary estimates, by setting rules for the guidance of the Ombudsman and by being the vehicle of access to the whole Legislature for the consideration of Ombudsman concerns, your committee has proven invaluable. I see your role as a protector and guardian of the Ombudsman concept, and I believe that other ombudsmen who do not have such a committee to assist them are at a great disadvantage.

As I appear before you today, I ask for your continuing support. Although I believe this office is in a state of general good health, there are several outstanding issues that very much concern me.

One is the issue of jurisdiction. During my term, the Ombudsman's power to investigate the merits of decisions by governmental organizations has been challenged on several occasions. In spite of the fact that judicial decisions from authorities as high as the Supreme Court of Canada have invariably affirmed the Ombudsman's power to investigate not only procedural fairness but also the merits of the decisions of governmental organizations, agencies such as the Ontario Labour Relations Board, Ontario Hydro and the Ontario Board of Radiologists have continued to challenge the Ombudsman's authority in this regard. Such challenges invariably delay and deny justice for affected complainants.

Although I have used my statutory powers to apply to the Supreme Court of Ontario for a declaratory order to determine the jurisdictional issue, and will continue to do so when necessary, I believe it is time for a loud and clear statement from this committee affirming the Ombudsman's jurisdiction in this area. Such a statement would serve as a warning to any governmental agency contemplating such a challenge that this challenge would not succeed.

Another issue of great concern to me is the fact that the long-proposed amendments to the Ombudsman Act are still outstanding. Seven years have passed and our amendments have not yet made the legislative agenda. As I have said in the past, several of the more than 60 proposed amendments are crucial to the better functioning of this office.

One of these would permit the Ombudsman to make a special report to the Legislature or to comment publicly on a complaint when the Ombudsman believes it is in the public interest. Another would permit financial compensation where a government agency is willing to pay a wronged complainant but cannot because it lacks the necessary statutory authority. Another would allow governmental organizations to reconsider their decisions where their current legislation does not provide for this. And yet another would require the Ombudsman to conduct educational programs to better inform the public about his responsibilities. Although the Attorney General (Mr. Scott) has promised to introduce these amendments, he has yet to do so.

The work of this office has increased dramatically in the last five years, 52 per cent overall. Last year the number of complaints and information requests closed reached an all-time high of 21,173, an increase of more than 22 per cent over the previous fiscal year.

Increased public awareness as a result of effective public education programs and outreach efforts by our regional offices were the key factors. Although we have reached out to more Ontarians in the last five years and have done so with no increase to our budget, we cannot be satisfied until every Ontarian is aware of the Ombudsman as an avenue for redress of grievances and as a protector of the right to fair treatment from government. This cannot be properly accomplished without an appropriate legislative mandate. Therefore, I urge this committee to use its powers in every way possible to convince the government to present these amendments to the Legislature during the next session.

Still another issue of concern to me goes to the very heart of the Ombudsman's mandate: the effective and efficient handling of complaints. As I mentioned in my annual report, I appointed a committee on expedited case handling to review our current practices in the light of the report prepared by John Kinley, which suggested improvements to our complaint handling and statistics presentations.

Recently, the committee, chaired by the executive director and with members representing every area of the office, presented its report to me. Having reviewed it and discussed the contents with the committee, I made a number of changes to the report.

The committee has done a superb job in producing an excellent collective effort which I am confident will significantly improve our complaint-handling efficiency. The report contains 75 recommendations that are presently being or are shortly to be implemented. The recommendations concern office and administrative procedures, staffing, the handling of complaints and inquiries, the investigative process and also staff morale.

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The committee recommended that a new format be adopted for the recording of incoming complaints. This form will be especially useful for instantly capturing complaints against nonprovincial agencies and will permit the intake officer simply to tick off appropriate boxes on the form as the complainant is

being interviewed. This procedure should cut processing time drastically and will be implemented by the beginning of next month.

Another recommendation involved our procedure regarding subsection 19(1) letters, which are letters to ministries, boards and agencies notifying them of our intent to investigate a complaint against them. Subsection 19(1) letters should be drafted within two weeks of the file being assigned. Further, governmental organizations will be divided into two types: those that might resolve a complaint upon the receipt of the 19(1) and those that would be highly unlikely to do so. In the latter case, the 19(1) letter will indicate that we will not wait for a response but will proceed immediately with our investigation.

Each governmental organization will be informed of our intention to change our procedure, and after a six-month trial, if successful, this procedure will be adopted permanently and the agency will be so notified.

Another recommendation concerns our administrative fairness procedure. It is essential that the principles of administrative fairness be allowed in every investigation, but depending upon the manner in which information is given to the complainant, this may be a very time-consuming portion of the investigation.

The committee recommended that at the administrative fairness stage the complainant be provided with the facts of the case either by letter or by telephone, depending upon the individual circumstances of the case and after discussion with the assistant director. This option of using the telephone will greatly reduce the case handling time.

Another area considered by the committee was a regulation which forbids my staff from expressing an opinion on any aspect of an investigation, especially in administrative fairness situations, where it may be difficult to provide adequate information to the complainant without expressing an opinion. Any misunderstanding that arises at this stage of an investigation can cause substantial delay. Shortly, I will be asking your committee to review this regulation.

I am convinced the Kinley report will make a great improvement in our ability to handle complaints more efficiently.

The final topic I wish to discuss at this time concerns the personal philosophy I have brought to bear in the exercise of my responsibilities.

As Ombudsman, my policy for this office has reflected my commitment and the historical provincial commitment to human rights. In the spirit of article 21 of the United Nations Universal Declaration of Human Rights, which guarantees the fundamental right of the citizen to reasonable access to the services of government, I have tried to make this office as accessible as possible to all of Ontario, and by that I mean the new Ontario which is multilingual, multiracial and multicultural.

Many of my programs were designed to reflect my concerns for those who may not always be in the mainstream but perhaps need our services most.

My regionalization plan is now well established. We have representatives in nine population centres across Ontario.

The field officer program has proved to be a resounding success,

measured both in the intensity of the outreach efforts performed and in the number of complaints received, especially jurisdictional complaints. As a result, I have made our field officers in Windsor, London and Sault Ste. Marie permanent full-time employees.

The native program I established is now well entrenched. It is committed to giving all aboriginal people, particularly in the geographically and culturally remote communities, an equal opportunity to utilize this office. Our native staff members have criss-crossed the province and made contact with hundreds of organizations and communities and have been instrumental in resolving many complaints involving native people in our province.

In the past, this committee benefited from firsthand experience by visiting several remote native communities. You did this two years ago and many of you were very enlightened by the program and what you saw. You have witnessed the many problems native people encounter in their dealings with government. These reserves were well served by your visits. I urge you to continue a program of personal visits to native communities and appreciate your continued support of our efforts in this regard.

The importance I attach to the sensitive and appropriate treatment of cultural and ethnic issues has been reflected in the creation of the position of ethnocultural officer. I am confident this program will prove to be a great success in encouraging the use of our services by members of ethnic and visible minority communities.

Finally, to serve the more than 500,000 franco-Ontarians in this province, I have submitted a French-language-service implementation plan for the approval of the office of francophone affairs. This plan will ensure that all our services are available in both official languages. We have already designated francophone positions in every major area of the office.

Although I am sure the next Ombudsman will bring a set of personal priorities to the task at hand, still I urge my successor and this committee to continue my commitment to accessibility. I have been privileged to serve as Ombudsman of this province. I have been blessed with an excellent staff, a conscientious civil service, a supportive standing committee and a public that has demonstrated great interest and full co-operation with this office.

Following in the path of my predecessors, Arthur Maloney, who blazed the trail and created an office which he fondly described as "second to none in the world," and the Honourable Donald Morand, who provided a careful and steady stewardship, I sincerely hope I am leaving a legacy of positive and constructive action in the preservation of this office as an authentic agent for justice, fairness and the protection of human rights in this province. I wish you well in all of your future endeavours.

Madam Chairman: May I, at the outset, say on behalf of the committee that I know we are going to be sharing quite a few months with you yet. It brought a lump to my throat when I read the opening of the annual report, to know that this was your last one. On behalf of the committee, I want to say how much we have enjoyed working with you and indeed will enjoy the next few months as well. We have the honour of having you for a few more months before you depart from your position.

Dr. Hill: That is right.

Mr. Tatham: Do you look after people who are not citizens of the province?

Dr. Hill: If they are not citizens of the province and have a complaint against a provincial agency, yes, certainly.

Ms. Bryden: I think the record of Dr. Hill has been really outstanding. We are very fortunate to have had him as our Ombudsman for the last two or three years.

Dr. Hill: Four and a half. That is OK.

Ms. Bryden: The development of your philosophy has meant quite a lot to human rights in this province. I am glad that you spent a portion of your statement outlining the keystones of it—accessibility and fairness in administration, as well as in dealing with the subject. I have one question in particular. How recently have you contacted the Attorney General about bringing in legislation to implement some of your recommended changes?

Dr. Hill: I have not got the date of the letter, but I have written him on several occasions. I think the last letter asking for those amendments to be put into use went two months ago or so, and he has given assurance that they would be.

Ms. Bryden: Was that during the present sitting of the House or before?

Dr. Hill: I raised it with this committee too.

Ms. Bryden: Do you add new ones to your list of recommended amendments every year and, if so, how many have been added in the last year?

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Dr. Hill: Within the last year, we have not added any to the original 60.

Ms. Bryden: But there is still an outstanding backlog of over 60?

Dr. Hill: We have been requesting amendments since—when was the first one requested, Michael, 1970—something, 1978?

Mr. Zacks: It was 1978.

Dr. Hill: It was in 1978 that we asked for the first amendments. We have been assured that they would be passed, but something happens; they never get introduced.

Ms. Bryden: Perhaps this committee might consider including in its recommendations that the Attorney General try to do something on those amendments this session.

Dr. Hill: Yes, the committee has.

Madam Chairman: If I could just interject on that, we have made our recommendations and I think it would be appropriate at some time today to discuss the manner in which we are going to deal with this particular issue and if, in fact, we are going to call the Attorney General before the committee to discuss this particular issue. I do not know that this would be an appropriate time, but I think we should consider it and perhaps towards the end of the questioning we should decide what course, if any, we should take

with respect to this matter, because it might be appropriate to have the Attorney General come before us on that issue.

Mr. Campbell: I would ask if there is any information that this committee has dealt with any or all of the recommendations, and in fact has recommended any or all of the recommendations to be presented to the Attorney General, to be passed on from this committee? I do not know if this is the role of the committee, but if it is, maybe a copy of what has been done previously could be given to the members of the committee so that we can be more or less up to speed as to what the recommendations are and how many this committee has dealt with.

Madam Chairman: The initial answer to that question is that tomorrow we will provide everybody with our 16th report, which was tabled in the Legislature towards the end of June. It at least picks up on some of the recommendations which the Ombudsman has reiterated in his annual report. Then perhaps it would be appropriate to deal with how we go about it. We have not put the Attorney General on our agenda at this time, but it is a long-standing concern of the Ombudsman and of the committee to get these amendments through in some form.

Mr. McLean: Mr. Campbell raised the very point I wanted to discuss: whether we could have a copy of all the amendments and their priority classification. I am wondering if your office could prepare what you feel is the priority from number one to 60, so to speak. I am sure there are probably 10 there that are very important and that should be given early consideration. I would suggest that you make a copy of them for all the committee members so that we could go on that. Perhaps you think they are all equally important and you do not want to make any recommendations, but I would like to hear your comments on that.

Dr. Hill: I do not think I can set a priority on them, but if we can—

Ms. Meslin: We cannot do it.

Dr. Hill: Well, we have not. The AG has it. We have not set any priorities on those.

Mr. McLean: Has the committee had a copy of the request?

Dr. Hill: No, it has not, I do not think.

Mr. McLean: How can the committee recommend that we proceed with the request of the Attorney General unless we have looked at it?

Dr. Hill: Mr. Bell might want to comment on that.

Madam Chairman: Mr. Bell will provide us with a bit of the chronology and the options. Then I think we should entertain what we should do with this particular problem.

Mr. Bell: Thank you, Madam Chairman. First, my apologies for being late. I have a real facility for reading two o'clock when it is really one o'clock. Michael Zacks and I are the only two in the room who go back to 1978. Let me give you a brief chronology. Then—Ombudsman Arthur Maloney reviewed with the committee in some substantial terms the current legislation with a view to developing amendments to the act.

Through Maloney, then Donald Morand and now Dr. Hill, a process was created between their office and the office of the Attorney General, which some years ago now settled on what I think your office believed was a package of amendments. The committee has visited from time to time the question of whether it should see those amendments prior to their being tabled in the Legislature, and if my recollection is correct, Dr. Hill, the advice from the Ombudsman was, "We'll leave that process alone until we have the bill tabled."

The committee accepted that for this reason, because as the committee has recommended now on at least three occasions—and the committee, as far as I know, believes the Attorney General has agreed to this—when the bill is tabled, it will go to this committee for clause-by-clause review and not to another committee such as the standing committee on administration of justice. This committee will then have ample opportunity not only to review any of the amendments but also to prioritize them if that is appropriate, and I suggest it probably is in some areas.

It is now 10 years, and I would ask you, members, not to consider the question of seeing the amendments but to try to determine when a bill will be tabled and, when it is tabled, is it still going to come to this committee? It seemed to me that if the focus goes now to the issue of what the amendments are and how they should be prioritized, it may deflect from the real questions: why has it taken so long and when is it going to happen? I do not think any useful purpose would be served by the committee now looking at those amendments until as and when a bill is tabled.

Mr. McLean: I find that hard to accept to a certain extent. The Ombudsman is making a recommendation for some amendments to the legislation he operates under. This committee, I believe, is still superior to that office and I am wondering why this committee would not have some input into amendments that were made eight or 10 years ago. They are asking now for input into expanded jurisdiction. We want to get that. We are going to be making some recommendations on it. If you want to change the bill, I cannot understand why the committee has not had any say in it.

Mr. Bell: This committee is going to have a say. I agree with you in terms of the relationship, and this committee's view is that when the bill is tabled, this committee will get it and that is when this committee will deal, as it considers necessary, with all of the proposed amendments. As I say, historically, it is for that reason—i.e., the receiving of the bill as and when—that the committee has stayed out of the discussion of what the amendments should be. That is why I urge a determination of the question, when is the bill coming, and if it is coming, reconfirm please that this committee is going to get it. If the answer to either of those is no, then, sir, I think your suggestion is the one the committee should be considering.

Mr. Mackenzie: This relates to the same problem. I was wondering whether you can tell us if the amendments—Dr. Hill has referred to five or six areas here that he considers important—are or were considered a package. Is that one of the reasons for the delay, that there may be unpalatable ones along with those that might get supported? I am inclined to agree that we do not want to look at the individual amendments, but it is crucial if we are not going to see a bill, and so I think the answer right off the bat is why the seven-year wait? That goes through two governments now. Why have we not seen a bill with the actual amendments? Are they a package or can some of them stand on their own? Can Dr. Hill tell us that?

Dr. Hill: The Attorney General has approved all the amendments. It

is a question of what has happened between that point and the introduction into the Legislature.

Mr. Mackenzie: I think the question for the committee then is obvious: we should be talking to the Attorney General and we should find out when we are going to see this bill.

Mr. Tatham: If you have waited for 10 years and nothing has happened, why ask somebody; if you cannot get it done, then open up the book and read out what you are after, because otherwise, if I am voting for something, all I say is, "Get this in front of somebody and say yes or no." That is all we want to know, is it not?

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Madam Chairman: Mr. Sterling?

Mr. Campbell: I guess I am starting to see where—

Madam Chairman: Mr. Campbell; I am sorry.

Mr. Campbell: Mr. Sterling is on the other side. Just knowing him across the floor—I do not need this the first day on the committee, but I get that in every committee, Madam Chairman. Do not feel bad about it.

I guess what I am after is to see the bill. In most cases, at least in my limited experience, a committee has received a bill and then debated the bill. It is probably very unusual to receive a pre-notion of a bill and then start debating it. Meanwhile, the Attorney General has the thing in his or her hands and is dealing with it.

I was just a little concerned that if it is a 10-year wait, that is something else, but the Ombudsman said that, in fact, they had all been approved. Is it appropriate, in your office as chair, to ascertain from the Attorney General (Mr. Scott) if we can expect the bill this next session or when we can? I know in other committees the chair has written a letter to ask if it is coming forward and if we can get started on some of these things.

I am concerned, with a 10-year delay, that some of these things may not be appropriate at this time. It may be the United Farmers of Ontario or something like that which may not be in existence any more and we are amending something 10 years out of date. That would be one of my concerns, anyway, in dealing with it in that manner. Certainly, if it has been 10 years and it has been approved, I think maybe that letter could go out, or have some communication from the Attorney General.

Madam Chairman: The legislation, as I understand, is not out of date; it is still well-needed. I think what we—

Mr. Campbell: I did not imply that. I just said maybe one or two sections.

Madam Chairman: The issue at hand here is the form in which we go to the Attorney General, whether it be by letter or whatever. Indeed, we have made the recommendation in our reports, which we have tabled. Perhaps a stronger use of our Legislative Assembly power would be to ask the Attorney

General to come before us and have some kind of ongoing discussion as to where he sees it. Really, it is the form. It could be a letter.

Mrs. Meslin: Just for informational purposes, the Attorney General and his staff reviewed the whole 60 with us two years ago. We went through the whole process before he gave us his agreement, because we did drop some and add some others, and then we had his agreement that what we now had was a package.

Ms. Bryden: I certainly agree with my colleague here that we should have a list of the proposed amendments, probably with a brief explanation of what they mean, initially, before we speak to the Attorney General.

I agree with Dr. Hill that it is probably more appropriate for this committee to prioritize the ones we think are extremely important which we would like considered probably in this coming legislative session in the fall. But I agree that it has come to the stage where we should ask the Attorney General to attend. Is there any particular place on the agenda in the next three weeks, if the Attorney General were available, where we could work in a meeting with him, after we have received the list and had time to study it ourselves?

Madam Chairman: There is some time in the last part when we could have time for the Attorney General, if the appropriate time we have is also a free time with him. We do have the last week and it is fairly flexible. We have some time as long as the timing is appropriate for him.

The alternative, if we cannot see him during these three weeks, is that we have a regular scheduled time when the Legislature is sitting to see him any Wednesday morning. Although the alternative may be two months away, we have a number of processes to have him before us, if that is agreed upon.

Mr. Pollock: Is it a point of procedure to introduce a bill into the House first, before you discuss it? Is that a problem?

Madam Chairman: My understanding from the clerk is that, as it is, government has to accept it before we deal with the bill. We would not see the bill before it was written and introduced into the Legislature.

Mr. Pollock: In other words, it is a bit of a case of getting the cart before the horse. They have to introduce it into the House first.

Madam Chairman: It goes to cabinet, then the committee of cabinet submits it to the Legislature and then we deal with it after first or second reading.

Mrs. Meslin: I was just going to point out that you cannot have it both ways. You could not see the bill first and then be expected to review it section by section. If you see it first, the government will wait until you have finished seeing it and then it will go to the standing committee on administration of justice after it is introduced.

Mr. McLean: From what I gather, these are very serious proposed amendments that they have. In the Ombudsman's news release on July 5, it says:

"The Ombudsman also calls on the government to bring forward proposed amendments to the Ombudsman Act. These amendments, which Dr. Hill has requested for four years, would permit the government to make mandatory

to get a feeling for when, if ever, we are going to see this bill in the Legislature. If you could direct your discussion to that as well, I would appreciate it.

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Mr. Tatham: You can bring all kinds of people here, but let us find out. Why not give him a phone call and ask him to confirm when it is going to take place. There is a letter he has already sent confirming he is in favour. Phone the Attorney General and ask him for his confirmation in writing. I do not mind talking to people, but you can spend an awful lot of time talking. Let us get it down in writing.

Mr. Mackenzie: We may be barking up the wrong tree altogether. It may be the House leaders we should be talking to, and getting the House back a couple of weeks early. If there is this automatic agreement by the Attorney General, then it is obviously a problem of scheduling.

Mr. Pollock: I am all for having the Attorney General come before the committee to discuss some of these things we have been more or less discussing, but is there not a little bit of a problem here? He can approve all these things, but when you start talking about the paying out of funds, does that not come totally under the jurisdiction of the Treasurer (Mr. R. F. Nixon)? He might approve the whole procedure, but I think the Treasurer would have to give the final stamp of approval on paying out funds, so we have a bit of a problem there, I would think.

Mrs. Meslin: The Treasurer has already agreed.

Mr. Pollock: He has already agreed too?

Mrs. Meslin: Yes.

Mr. Pollock: We are getting the information piece by piece.

Madam Chairman: I think we have summed it up as trying to get the legislation on the table.

Mr. Elliot: I think we should focus in on the concern at hand, and that is to find out. The bill, for all we might know right now, might be drafted and ready to go. The comment that was made with respect to the House leaders not putting it on the schedule of events might be the real concern here, so I think about three things should happen here.

Madam Chairman: Mr. Elliot moves, seconded by Mr. Tatham, that the committee communicate by phone with the Attorney General's office and find out whether or not there is anything in the works, confirm that in writing, and as a third step, if necessary, ask the Attorney General to come before the committee and give us a time line on when something is going to happen.

Mr. Bossy: The point I was trying to make is that if it is just for the sake of finding out whether the Attorney General is going to have a bill or not, do you bring him in and sit the Attorney General right there and ask him, "Are you bringing forward a bill"? Then we have no other information, so I do not think we have to go through the procedure of bringing the Attorney General here.

I think the committee has the power now if we want to decide on writing

payments to people who have suffered a loss as a result of a government action. It would allow organizations to consider their decisions where the current legislation does not and would require the Ombudsman to conduct educational programs to better inform the public about his responsibilities."

I think this is a major piece of legislation. The Ministry of the Attorney General probably does not agree with some of the recommendations, and yet I think what you have to do is have the Attorney General before us to indicate whether he is going to implement legislation or not. If it has gone on as long as it has, there is a stall. They do not agree with some of them, so therefore they are not doing any of them. If there were some prioritization, perhaps something could be done, but I think there are probably a few here that they do not like, so they are not doing any. That is probably the recommendation from the ministry staff.

Mr. Bossy: Concerning bringing the Attorney General here, has it ever been requested before by the standing committee on the Ombudsman in the past, within the past 10 years?

Mr. Bell: I can answer that. The Attorney General of the day has appeared before this committee on at least three or four occasions, not on the issue of amendments but on other legal issues that arise from time to time. For example, what is the legal status of this committee's recommendations as adopted by the House? As well, other ministers of the crown have appeared before the committee as the occasion has required it.

Mr. Bossy: If we bring the Attorney General in to discuss and to ask him questions on the amendments, how knowledgeable will we, as members of this committee, be if we do not have advance information as to what was requested earlier of the Ombudsman to prioritize? What amendments has he really agreed to, all 60 of them?

Dr. Hill: He has agreed to everything. Let me make very clear that the Attorney General has completely agreed with the amendments. It is now a question of, "Why the delay?" He has agreed to it in writing, so there is no question that he has agreed. It is not that he has agreed to one or he has not agreed to another; he has worked with us and agreed to the package. I do not know what happened after that.

Mr. Bell: The issues for discussion with the Attorney General would be not the detail or the particulars of the amendments, but the issues of when the bill is going to be tabled in the House, and second, the reconfirmation that this will be the committee that gives it the clause-by-clause review.

Let me just support comments that have been made. If you go into the details of the legislation now, the chances are you will not get the bill when it is tabled in the House. It will go to another committee and then you have the potential for inconsistent results by committees of the Legislature. You run the risk of losing the process you set up some time ago, which I think is an important process in terms of getting amended legislation.

Madam Chairman: I have just two more people right now on the list to discuss this point. May I put a suggestion on the table that we invite the Attorney General, at his convenience, to come before us and discuss with us where he sees the priority of the Ombudsman Act amendments on his list of legislation, and have them before us. Perhaps the two people who are following now will direct their attention to that particular issue because I get a general consensus that we would like to speak with the Attorney General

a letter to the Attorney General under your signature, requesting a reply as to the concerns of the committee and asking when he is going to be bringing forward legislation. It is going to be no different an answer whether he is here or not. He will respond to our letter, I am sure. To force the Attorney General to come here just to ask him, "What are you doing about legislation?" seems a little bit simple to me.

Madam Chairman: The three-point motion that Mr. Elliot put forward was to communicate by phone, request confirmation in writing as a reply from the Attorney General when they anticipate Ombudsman Act amendments or a new bill to be tabled in the Legislature, and third, if that response is not an appropriate response, to have the Attorney General before us. That is the motion. Are you suggesting an amendment to the motion by suggesting instead of—

Mr. Bossy: Then what I understood in the original—forgive me.

Madam Chairman: Was I correct?

Mr. Bossy: It sounds like a good analysis. I accept that.

Madam Chairman: Yours would be an amendment because you suggested writing from the chairman on behalf of the committee, and this motion puts forward a phone call. Do we have any further discussion on this particular motion? Does everybody understand the motion as it sits?

Ms. Bryden: If the Attorney General takes quite a long time to reply, then it gives us much less time to make an appointment with him. Can we not include in the motion a request that he be available to meet with the committee on this subject? Of course, I would also like, but it probably should be a separate motion, that we still ask for a list of the amendments to be supplied to the committee. We do not have to discuss every one of them.

Madam Chairman: We can just ask the Office of the Ombudsman for the list of amendments, if you would like that. My feeling is the Ombudsman's office would be more than willing to provide you with a list. The prioritization is a different matter.

Ms. Bryden: Yes, I agree with that.

Madam Chairman: On the list of amendments, Dr. Hill, would your office be able to make available to the committee members a list of the amendments you are proposing in more detail than the four generic sort of specifications you made in your annual report?

Mrs. Meslin: Our only problem is that the amendments now are the Attorney General's amendments. I do not know how we could be seen to be giving a list from our office.

Mr. Campbell: Just not to confuse this thing and go around in a circle, I think the motion, as presented by my colleague, is appropriate. Since they are the property of the Attorney General and there has probably been some executive council input into the thing, we should deal with that first and then cross the other bridge when we come to it, because I think it is appropriate in that time line to have the bill before us in its final form and to try to get the bill at least introduced as soon as possible.

Mrs. LeBourdais: I might just recommend that rather than simply

putting "at the convenience of the Attorney General," since it has gone on for so long thus far and since Dr. Hill is coming to the end of his term, that it perhaps might be a nice reward for Dr. Hill to be able to see this as a conclusion to his term in office. Perhaps some time parameters could be put to that.

Mr. Tatham: How about next week?

Madam Chairman: A reply by next week?

Mrs. LeBourdais: I do not know if I would say necessarily by next week but—

Mr. Tatham: Why not?

Mrs. LeBourdais: —a certain fair time. As I say, in view of the—

Madam Chairman: To reply in writing or to have the Attorney General before this committee?

Mr. Mackenzie: If you are asking for a reply in writing, if you are calling him today or tomorrow, a week or 10 days is plenty of time to get a letter back.

Ms. Bryden: You could point out that the committee can only sit for three weeks at the most.

Madam Chairman: Mr. Elliot, I see this as an amendment or some kind of qualification to your motion, some kind of time—

Mr. Elliot: I would agree that time is fairly important. If you are going to be calling him in the next day or two, by the end of next week we should know whether there is a bill in the works or not. If you find out in the telephone conversation that there is no bill, for example, it would be great if you came back and told us that. Then we could put a little bit more pressure on to get some resolution of the problem. I am assuming you are going to phone and you will find there is a bill well along that will be—

Madam Chairman: Then in writing we will get confirmation of the timing or if indeed it is on the agenda, in which case we may have to take alternative action with the House leaders and/or other parties.

Perhaps we could call the question and vote the motion. I do not see any opposition, but in any event, since this is acting on one of the Ombudsman's recommendations, the motion is that we communicate by phone with the Attorney General whether there is a bill amending the Ombudsman Act in motion or if they are working on that bill, that we get some confirmation in writing as to the status and request that reply by next Thursday, which is August 18, and third, if no reply is forthcoming, or a reply is deemed satisfactory by the committee, then we have the Attorney General come before the committee, if necessary, to discuss this prioritizing of this bill.

Motion agreed to.

Madam Chairman: Mr. Mackenzie, you were first on the list on other questions.

Mr. Mackenzie: There are just two I want to ask Dr. Hill. One, can

he give us some idea of the time frame that is involved now in looking into and finalizing human rights complaints or complaints to the Ombudsman's office? I should not say human rights, but complaints to the Ombudsman's office. What kind of time frame is involved in handling a case now?

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Dr. Hill: There is great variation, depending on the type of case and whether there are legal questions in law. Do you have any idea of the rough time frame element?

Mrs. Meslin: We have a whole cross-section of durations.

Dr. Hill: Terrific cross-section.

Mrs. Meslin: It is difficult. We will often get something out in a couple of months, but then again, it may take a couple of years if it is highly complex.

Mr. Mackenzie: It was actually because of human rights and labour relations cases and some of the time frames we are running into in those cases that I wondered just what time frames they were.

Dr. Hill: If it is something like Argosy, it is several years. A lot of them, most of them, have been settled in a matter of a few weeks or a month or two.

Mrs. Meslin: You mentioned both labour cases and human rights cases. Human rights cases are a unique problem for us, and it is one of the amendments we are trying to get, because we cannot make recommendations if they have reheard.

Mr. Mackenzie: This is not resolved.

Mrs. Meslin: That one is up in the air. In terms of the Ontario Labour Relations Board, those issues have proceeded and a decision has been made, and although we are investigating, nothing stops the process from continuing on while we are investigating. In employment standards cases, if we are talking about someone having been fired and he has gone through the grievance procedure and then come back and complained about the decision, it appears to me that those things are well past any particular time. There is often not an urgency unless it is in a human rights case, and then we are stuck because of the lack of this amendment.

Mr. Mackenzie: I guess in the same vein as that, you make the argument of agencies such as the labour relations board, Hydro and the Board of Radiological Technicians challenging the authority of the Ombudsman. In the case of the labour relations board, do you take into account the fact that in some of the legislation, workers and their unions have given up rights in the interests of collective legislation? Is that part of the case or part of the problem, or do you accept that?

Mrs. Meslin: Yes. I do not think that is part of the issue Dr. Hill was addressing himself to. He was addressing himself to new jurisdictional issues now raised by the labour relations board, even after the merits issue was decided upon at the Supreme Court of Ontario. We now have two new

jurisdictional issues that hold up those cases while we go to court and we are in the process of going to court over those now.

Madam Chairman: Are there any further questions from the committee about Dr. Hill's annual report? I just have one about the federal Ombudsman. You have made a suggestion that there be a federal Ombudsman attached. As you know, in our 16th report we adopted that recommendation. As the chair, on behalf of the committee, I have sent along our report which encompassed the recommendation.

Can you suggest any other assistance the standing committee can be to you in trying to get a federal Ombudsman established? I understand there is one being established, but only to deal with bank charges.

Dr. Hill: I have not turned my mind to other procedures, but all three of us have been working assiduously on this problem. Michael has been working with the New Brunswick staff people on the same issue, and a number of other jurisdictions. He may have a few points to make in addition to what I have already made.

Mr. Zacks: I have only one suggestion that comes to mind, and that is that if you do have the opportunity to speak with your federal colleagues, mention your experiences with the Ombudsman and the views that you hold. Apparently there is some resistance at the federal MP level about the benefit and utility of having a federal Ombudsman. If you could share your views and impressions with your federal counterparts, that would be of great assistance. Of course, I am assuming they are all as positive as mine, but if you do have these opportunities, please raise them with federal MPs and suggest to them the benefits you have seen from your participation in this committee and in general with contact with the Ombudsman's office. It would go a long way in assisting the development of a federal Ombudsman.

Dr. Hill: You might remind your colleagues at the federal level that the magic figure is well over 1,000 matters that we have handled federally, just because we do not want to see residents of Ontario hurt. We are trying to help residents and citizens of Ontario, so it is well over 1,000 federal matters that we have handled.

Madam Chairman: Are there any comments on this point from the committee? If not, Mr. Bell.

Mr. Bell: Thank you. Dr. Hill, can I just focus on a number of issues that you have touched upon in your report to give them some more detail to assist the committee in making any necessary decisions?

First, sir, on the issue of your jurisdiction, which you refer to at pages 5 and 6 of the statement, you cite some names, at least certain governmental organizations that continue to challenge your authority. With the exception of the Ontario Labour Relations Board, I take it you have decided not to go to court on any of the others.

Dr. Hill: We nearly went to court with Hydro and—

Mrs. Meslin: No.

Dr. Hill: Are going, do you know?

Mrs. Meslin: No.

Dr. Hill: On several occasions we have just about gone to court with Hydro; none of the others. Only with the Ontario Labour Relations Board.

Mr. Bell: OK.

Mrs. Meslin: No; we are going to court with Ontario Board of Radiologists.

Dr. Hill: Radiologists; pardon me. I am sorry, there are two.

Mr. Bell: All right. Then dealing with that board, you would agree with me that it is not appropriate for this committee at this point in time to become embroiled in a discussion of whether you have or have not jurisdiction over that board.

Dr. Hill: That is right; it is a court matter.

Mr. Bell: That leaves us with Ontario Hydro, plus any other unnamed governmental organizations with whom—

Dr. Hill: Yes.

Mr. Bell: What form do you contemplate of the loud and clear statement that you have asked this committee to make confirming the Ombudsman's jurisdiction when you say "in this area"—and I am not sure how widely that area has been cast—on page 6?

Just let me telegraph my problem. I think it is appropriate for you to ask this committee, as and when you think it necessary, for some support, assistance, backup, if you will, in respect to governmental organizations that are recalcitrant in terms of permitting your investigations to be undertaken. We could name a few that have gone on in the past and have been resolved, I think, to your satisfaction. How, though, can this committee, without some specific context, say or do anything to assist you on this jurisdictional matter?

Dr. Hill: Is it possible to mention this matter in some general supportive way in your report?

Mr. Bell: One of the things I have done in the last three weeks is that I have taken a refresher course on how to determine the jurisdiction of the Ombudsman, and there is at least, if you want to go through the court process, a five- or six-step formula. I am not sure, short of going through that formula, for example, for Ontario Hydro, that you would accomplish anything, and even then I think you would have to have a specific case.

Dr. Hill: Yes.

Mr. Bell: All right. Let me ask you on that point, have you got in your office specific examples of, say, Ontario Hydro resisting your efforts to investigate?

Dr. Hill: I think our counsel can give you some examples. Our counsel can provide you with the information you need on this.

Mr. Zacks: Let me just preface my statement by saying that Ontario

Hydro has for years taken the position that the Ombudsman has no authority to investigate its complaints, on the ground that it is not a governmental organization.

Interjection.

Mr. Zacks: Ontario Hydro is not. That is their position; I am not sure what they claim to be, but that is their position. However, we have agreed to disagree on that point. They allow us to investigate, and we do resolve a fair number of complaints.

However, the issue came to a head about six or seven months ago in a particular case that raised some unusual legal questions as well as the overall issue of jurisdiction. Those questions brought the matter to a head. We could not resolve them and we retained counsel. Just before the court papers were filed, Ontario Hydro found out that indeed the Ombudsman was correct on the merits of the case and the matter was settled to the complainant's satisfaction. Accordingly, the legal issues were dropped for another day.

We are continuing to investigate Ontario Hydro complaints. Until the issue about jurisdiction again gets raised, we have reached an impasse. Accordingly, we are just going ahead and doing the investigations. They have never really forced the issue, except in this one particular case.

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Mr. Bell: OK. But, again, it sounds like you have a long-standing arrangement with Hydro which is not a lot different from the one you have with the public trustee; that the question of jurisdiction is deferred until it is in Hydro's or the public trustee's best interest to raise it.

Mr. Zacks: That is correct.

Mr. Bell: As I have said before, I think you have three avenues open to you when you hit a roadblock: you can go to the court quickly; you can try to negotiate or resolve it; or I think it is appropriate to go to this committee in specific terms and say: "This is as far as I've gone. I can't go any more. These are the reasons I'm convinced it's a governmental organization and it's appropriate for this committee to have discussions with you and the governmental organization to try to resolve and to work through the issue before the court." If you are asking the committee for that type of thing, I think, with respect, we need to get something in specific terms. Otherwise, it gets a little dangerous, I think, expressing opinions about jurisdiction in abstract.

Mr. Mackenzie: Especially with Hydro.

Mr. Bell: Especially with Hydro. We might lose our power.

Mrs. Meslin: I think you have put it a little unfairly in terms of the new relationship with the public trustee compared to Hydro, because the public trustee at this point, although he has said, "If we come to an impasse, we're prepared to fight you on it," is most co-operative from the beginning. Hydro always, invariably, puts the jurisdictional roadblock up as soon as we write it and tell it we are about to investigate. We then have to go through this process of arguing again with it. The time involved and the difficulty in the way in which it chooses to "co-operate" has hampered our investigators.

They find it increasingly difficult to go in there, until this recent case, when we decided we were going to take it and then (inaudible) down.

Madam Chairman: Just Mr. Elliot on this point.

Mr. Elliot: I think this is a particularly pertinent topic at this time, because it seems to me that if we are talking about expanded jurisdiction, we should know what the jurisdiction is that we are expanding. Is it reasonable now, on performance, to come up with a realistic list of agencies and government departments which have been co-operative? To me, as soon as they back off on a case— In the case of Ontario Hydro, I think Ontario Hydro could be added to a list of people who have accepted that the Ombudsman has jurisdiction in that area. Is it possible to document things that closely on the basis of the experience we have had to this time?

Mr. Zacks: To be fair to Ontario Hydro, it does not accept we have jurisdiction. It co-operates, but on a without-prejudice basis; there are a couple of other organizations that do the same thing. There is no Ombudsman in Canada who has a schedule of named organizations. There is a variation in British Columbia, but those names of organizations have never been proclaimed. Most provincial ombudsmen establish their jurisdiction by a much clearer formula than exists in Ontario.

There are some ombudsmen in other countries who do go with a list. In fact, a proposed federal Ombudsman act about 10 years ago did go with a schedule of named agencies which were listed over which the Ombudsman would have had jurisdiction. There are pros and cons to doing it.

Dr. Hill: I do not think we are talking about more than four or five at the most, approximately. Would that be close?

Mr. Zacks: Not even four; two or three.

Dr. Hill: Not even four. Of all the 500 agencies we deal with, we are talking about maybe three or four that keep on recurring with us.

Mr. Elliot: So John's comment on this, if there are just four or five, if you get into a dispute, take it to court and settle it once and for all, is a good suggestion?

Mr. Zacks: I think he is making a suggestion that this committee also be looked upon as a dispute resolution device for jurisdictional complaints.

Mr. Bell: I do not know how many committee members recall the issue with the former public trustee, and as far as I am concerned, that should be the Ombudsman's test. I think what you said to the committee last time, both in your report and in person, was that the position adopted by the office of the public trustee interfered with your ability to perform your functions under the Ombudsman Act in an investigative and in other Ombudsman-type ways, and I think that should be the test.

Any time a governmental organization adopts a position, not on a one-shot basis but on a consistent basis, such that it interferes with your ability to perform your functions vis-à-vis complaints, then you should come to the committee and say, "It's happening again; this is the particular governmental organization; these are examples." The committee, as it did last

time, can decide to invite the head of that governmental organization or some sufficiently senior representative to come and explain.

Without passing on the merits of Hydro's position or your position, it is one thing to take a position as a negotiating function with the Office of the Ombudsman; it is another thing to come and say it publicly. I would be very interested, for example, to hear Ontario Hydro's explanation of why it is not a governmental organization within the language of the Ombudsman Act and the definition as proposed by the Ontario Court of Appeal. I am not saying they are wrong. I would just be very interested to hear it.

I think, though, you have a lot on your plate in the next three weeks, plus the other— May I suggest, Dr. Hill, it may be something for you to now take under advisement with your staff. If you think your function is being interfered with, adversely affected, to borrow a phrase, formally notify the committee in written form in the next two weeks or so and the committee can decide if, as and when to put it on the agenda.

Dr. Hill: That is very supportive, Mr. Bell. We certainly will put that under advisement and consider it very carefully.

Mr. Bell: I would not confine it to Ontario Hydro. If you have others—

Dr. Hill: We have a few. It is up to you.

Madam Chairman: Anything else, Mr. Bell?

Mr. Bell: On page 12 of your statement, the new procedure with subsection 19(1), I understand the purpose is to start the time running earlier rather than later. I guess what I am saying is, how can the governmental organization determine ease of resolution as opposed to the complaint?

How would it affect your process if you did this? If you investigated every complaint as you issued the 19(1)—and those that you know or believe will be resolved are going to resolve anyway; those that will not are going to continue to steam along—I do not know. Statistically, it may not be a large percentage. I would love to ask you who is on the list, but I do not think I will.

If the investigation starts immediately on the substantial majority of the cases, then maybe it is not a problem, but if the number by percentage of those you hold back is significant, you may be holding down your statistics again.

Mrs. Meslin: I think there are a goodly number of places where, upon receipt of the 19(1), once they start to get hold of the file and the data and then respond to us, it is a communication problem that has occurred and the settlement is almost imminent, depending on the length of time it takes them to get their files and get their act together and send us this response.

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In many cases, the other issue is clearer. We wait three weeks, and in four weeks they write back saying, "We don't have any response at this time." It is that particular thing we are trying to get at. Why go through the process we have had all along of giving everyone three weeks when we know

there are many, many agencies that are only going to say, as they have said in the past, "We don't respond at this stage"?

Mr. Mackenzie: Could I stay with that for a minute? How do you decide the two types now, those that might resolve and those where it would be highly unlikely? Just from experience?

Dr. Hill: Yes, experience.

Mr. Bell: I think you had better do a confidential memorandum to your successor as to who is and who is not on the list.

Dr. Hill: I would not mind at all.

Mr. Bell: On page 14 you make reference to regulation 4(ii) under your act respecting the prohibition on members of your staff from expressing an opinion with respect to the matter that is under investigation and you say you are going to be asking the committee shortly to review the regulation. When will that be?

Mrs. Meslin: I think we were hoping to wait until this series of meetings is over and as the House sits, when we have our Wednesdays, set aside one of the those.

Mr. Bell: OK, so we will not get into it now. Can I just give you a comment, though? I think anything you are going to ask this committee to do—note that the regulation forbids the expression to anyone of an opinion, recommendation or other similar comment respecting the matter that is being investigated, in the language of the act.

If you could address your comments to those three areas of communication, i.e. opinion, recommendation or other similar comments, bear in mind the reason for this regulation is that many, many years ago, during the course of an investigation, one of your investigators expressed an opinion on the fault, if you will, or the conduct of a particular member of the governmental organization whose conduct was being investigated in part, to the superior. The superior took that with some gospel and that person's position was not terminated, but there was a less-than-lateral transfer.

That is what the committee wanted then and I am sure now wants to make sure is avoided at all costs. I guess if you are going to come to seek an amendment to that regulation, view it as a show-cause exercise.

Mr. Mackenzie: Is one of your staff people hearing a case from a complainant expressing an opinion if he or she says: "Well, I think you've got a case. We'll investigate it"? At what point in time—

Mrs. Meslin: We do not do that.

Dr. Hill: We do not do it. Never, never. It is a no-no.

Madam Chairman: Mr. Bell, anything further?

Mr. Bell: Dr. Hill, in general terms, are governmental organizations doing any better today than when you started four years ago in terms of administration of the type that comes across your desk?

Dr. Hill: My general feeling is that we are getting more

co-operation, basically; that there is a greater understanding. I think a lot of it is related to the fact that we have established these committees in a number of the major ministries, where we are working co-operatively at a lower level between the investigators and the committee staff people to resolve cases. On balance, as the lawyers would say and as you would say, on balance the answer is yes. We are getting a higher level of co-operation and things are going better than they did when I started. No question.

Mr. Bell: Is ombudsmanship easier or harder today than it was when you started?

Dr. Hill: It would be easier if Ian Scott would pass those amendments. It would be a hell of a lot easier. I will tell you that much.

Mr. Bell: "This commercial is paid for by...."

Dr. Hill: That is the truth. They would be, because there are certain legal technicalities and problems encumbering us now that are just a big nuisance, and I think we should get them rectified. That is what is making the job a little more difficult.

Mr. Bell: If I can get my two cents in, as I usually do, I know we will be talking many more times over the next months, but let me just say formally that I have valued the working relationship I have had with you in your office, again, as the guy who was around since 1976. You are the third person who has held the chair, if I can call it that. I think your contribution, which history will write, will be an extraordinary one. The term "fresh air" comes to mind. "Working together" also comes to mind. This is my formal thanks and appreciation for the work you have done, sir.

Dr. Hill: Thank you very much. I appreciate that confidence.

Mr. Campbell: On page 17 of your report, where you are talking about your offices and jurisdictional complaints, you say: "As a result, I have made our field officers in Windsor, London and Sault Ste. Marie permanent full-time employees." I would take it that, before, you had staff who were visiting those communities and taking complaints on a—

Dr. Hill: No. They were there on a three-days-a-week basis. They were people local to the area, which is one of our principles. We do not hire outside. We hire people within those communities and they were working on a two-days-a-week or three-days-a-week basis and they got flooded. We just made them permanent full-time.

Mr. Campbell: It is a result of the increased case load because of your presence on a temporary basis?

Dr. Hill: No question.

Mr. Campbell: Would you see other offices being in that position in the future?

Dr. Hill: I could see four more I would like to open, but I am the outgoing Ombudsman.

Mr. Campbell: I am trying to get a sense of case load and where it

is. Two are in southern Ontario and one in northern Ontario, in addition to the full-time officers you already have.

Dr. Hill: We are still looking at other areas that need service, whether it is by going in and out on a regular weekly basis. For example, we just had a major community meeting in Hamilton. There is a great demand for a service in Hamilton. I think for the time being, considering our budget and all, we can serve Hamilton by going in and out on a regular basis from Toronto and we will work up some kind of a service program based on that. We are going to have to look at a few other places on that basis until we establish any on a more permanent basis.

Mr. Campbell: One more questio , if I might, Madam Chairman: In northern and eastern Ontario, would you see that perhaps you would have a higher proportion of case load or the same as the rest of the province or lower?

Dr. Hill: Sault Ste. Marie is alarmingly high. Sometimes it has to do with the worker too within that particular area. Northern Ontario—

Mrs. Meslin: Timmins has been very high.

Dr. Hill: Timmins, Sault Ste. Marie. Northern Ontario is really moving at a much greater rate proportionately than southern Ontario, I would say.

Mr. Campbell: Would you say eastern Ontario is the same?

Mrs. Meslin: In eastern Ontario we have only Ottawa at this point.

Dr. Hill: We have only Ottawa. We have not got anything in Kingston.

Mr. Campbell: I see. Is Kingston—if I might, Madam Chairman, I am just trying to pursue this.

Dr. Hill: We are taking a hard look at Kingston. We get more and more requests coming in from the Kingston area.

Mr. Campbell: Thank you.

Ms. Bryden: Dr. Hill, I was very interested in your comments about the native program. Could you tell us roughly how many native officers you have and where they are based? You say our native staff members criss-cross the province. Presumably you visit the reserves; you yourself have made visits, I understand.

Dr. Hill: Yes, I made a number of visits. We have a native person working out of the Toronto office who goes all over. He stays on the road. We have another native person working out of Timmins; we have two working out of Timmins. Is that correct?

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Mrs. Meslin: No, one.

Dr. Hill: One and one is on temporary leave and will be back

shortly. We have two working full-time now and a third one coming back: Timmins, Toronto, and they move. They just stay on the road.

Ms. Bryden: Having a native serve is something you can claim as a first in your term of office. Is that right?

Dr. Hill: We know of no other Ombudsman office in Canada with a native staff person. I think ours is the only one.

Ms. Bryden: With regard to your implementation program for francophone service, is that not going to require a considerable expansion in your budget? I understand that you have it on paper at the moment as to how to give service in both official languages. How are you going to implement it?

Mrs. Meslin: It is not just on paper. We have taken from within our budget in order to begin this process: all our major pamphlets, brochures, our annual report, everything is in French. What we have done is attempted to upgrade within the office those people who have a reasonable facility. We have had anyone who believes he has a reasonable facility in French tested. Those who have come out as superior we have sent for additional schooling to bring them up and, as we hire new people in each particular area, we have designated staff positions as having to have French-speaking capability.

We have done that within our budget at this point. We did ask in this year to be able to hire two additional French-speaking staff. That was the budget expenditure for this year that we asked for. Other than that, we have done it within the budget we already have.

Ms. Bryden: Did you get approval for that expenditure?

Mrs. Meslin: Yes, we did.

Ms. Bryden: In your report you say you have submitted a French-language services implementation plan for the approval of the office of francophone affairs—

Mrs. Meslin: Yes. The office of francophone affairs has asked every ministry, board and agency to do an overall approval which is a sort of long-range one. We sent that in over a year ago, and we just have not got their approval of that, which is a long-range plan. But while we were waiting, with our own money, we did most of what we had set out to do ourselves.

Ms. Bryden: I am very pleased to hear that you have done that much, but presumably you would need an increase in budget for the long-range plan.

Mrs. Meslin: Yes.

Ms. Bryden: You did mention in your comments that there had been no increase in the budget. Is that just in your four and a half years or since the program was put in?

Dr. Hill: In my four and a half years.

Ms. Bryden: That is really rather shocking when you think that your case load in that same period increased by about 45 per cent.

Dr. Hill: Must be just a dip in managerial style.

Madam Chairman: Any more questions from the committee at this point?

Mr. Tatham: I have one question to Dr. Hill. What percentage of our people are bilingual? In relationship to the population, are we just about on—

Mrs. Meslin: In the regional offices that have a large francophone component in their areas, at least one of the people in those offices is completely bilingual. In the Toronto office, what we have attempted to do is—presently in the office, we have 12 fully bilingual and another six or seven coming on line who are bilingual but do not feel they are as capable of handling, for instance, legal matters, and so they are going on for training. I think we are attempting to cover the spectrum from receptionist to director. Our director is becoming fully bilingual.

Mr. Pollock: To go back to a question asked by Ms. Bryden, you said you had no budget increase over the last four years.

Dr. Hill: Just this last year.

Mr. Pollock: Oh, just the last year.

Dr. Hill: Our first increase was this last year. For four years I asked for no budget increase.

Mr. Pollock: You did not get your cost-of-living index then?

Mrs. Meslin: Oh, yes.

Dr. Hill: For the staff, you mean?

Mr. Pollock: You got that.

Dr. Hill: Yes, we got that.

Mr. Pollock: OK. I just wanted to clarify that.

Madam Chairman: I have a question. I notice that you made reference in your report to the Learn About Your Ombudsman Week, and I just wondered if this was going to be an ongoing program to educate members of the public in Ontario about the role of the Ombudsman and how you can serve them.

Dr. Hill: We will need a bit more money for it but we certainly are considering that as a possibility. It was an excellent educational venture, quite helpful, and the public benefited by it and so indeed did we. If we get a few more funds perhaps or if we juggle a bit, I would like to see us do it again, but I am not positive yet. It depends on how much money I get my hands on.

Madam Chairman: Are there any questions about the report at this point, or can I move on?

One point that I left hanging after our motion was the request by Mr. McLean and Ms. Bryden, a similar request, that somehow they get in their hands the amendments that are being proposed to the Ombudsman Act. I wonder if it would satisfy both those members and other members if we could get from the Ombudsman the suggestion of amendments that you have made to the Attorney General—just your wish list or what it is that you would like—if that is not a confidential document. That will provide us with a list of

amendments you see anticipated or what you would like to see changed in the Ombudsman Act, and we could have that in our possession. Would that be sufficient information at this time?

Mr. McLean: From the way it ended up, I would be pleased now to wait and see what reaction you get back from him and find out.

Ms. Bryden: I still would like to see the list. I think we are in a better position then to know what to press the Attorney General to consider in his draft bill.

Madam Chairman: Mr. Mackenzie?

Mr. Mackenzie: I have a separate question.

Madam Chairman: OK. Mr. Campbell on that point?

Mr. Campbell: On this point. I think I agree with my colleague across the way that it was left that it is really the property of the Attorney General at this point. We should have the indication from him or his office as to what is going on and then proceed appropriately. I think in the interests of keeping this thing uncomplicated—it has been 10 years—another week will not hurt. When we find out where it is going, then we can make a decision, if I might suggest that.

Madam Chairman: Is that acceptable, Ms. Bryden?

Ms. Bryden: Yes.

Madam Chairman: Then we will wait and see what the Attorney General says about these in particular. I just did not want to leave it hanging when you had brought that up as an issue.

Mr. Mackenzie: I want to go back to your comments about the ability of your staff to express an opinion just for a moment, for my own information. When somebody comes to you with a case, it is a no-no to say, "We think you have a case."

Dr. Hill: At that point.

Mr. Mackenzie: What about the reverse? After you have listened to them, do you very often say or are you free to say, "We don't think you have a case"?

Mrs. Meslin: You certainly get to the point where the Ombudsman can make a decision that he is not going to support what is the essence of it or he can look at it and decide that it is frivolous or vexatious and decide against it. There are a number of things in the act that allow him to do it, but the point is that it is for the Ombudsman to decide and not for individual staff members to communicate that particular message.

Mr. Mackenzie: So a staff member would not make that kind of comment even if it was fairly clear to the person—

Dr. Hill: The only one who can sign a report under the statute is the Ombudsman and the only one who can make that comment or say something of that nature at a particular point in the complaint is the Ombudsman.

Mr. Mackenzie: I use as an analogy my own office. We have a lot of people coming in who have complaints, and there are some of them right off the bat, once you have heard the argument, you have to tell them that you just do not think they have a case.

Mrs. Meslin: That is the reason we are looking to an amendment. There are some situations that are so clear that the investigator would like to be able to say, "With everything you have given me, if you have nothing more, if there is absolutely nothing more, there is nothing here," but we cannot do that and do not do it.

Mr. Mackenzie: It works both ways in other words, whether you do have a case or you do not have a case.

Mr. Bell: The only person who can express opinions and formulate conclusions is the gentleman sitting beside you, and for the vehicle there, if it is a clear no case, the citizen has a right to insist at that stage, "You investigate my complaint," because I am sure that citizen believes the complaint is justified. The relief is to exercise your discretion not to further investigate the complaint on the grounds set out in section 18.

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Mr. Zacks is shaking his head no. We can engage in that after hours. In any event, enough has been said about it, I guess. It is to keep at a minimum the risk that people in the public service are going to be unfairly categorized by actions at a time when your investigation has yet to start, is in its infancy or is at any stage. If you are going to call a spade a shovel in respect to somebody's conduct, let it only be the Ombudsman.

Mr. Mackenzie: I can see some difficulty in not making a case out of it, in not having the ability to say anything at all.

Mr. McLean: How does our Ombudsman Act compare with other jurisdictions? Are these amendments you are looking for in other jurisdictions in their legislation or are they looking—

Dr. Hill: Some are and some are not. A lot of them are.

Mr. McLean: A lot of them are?

Dr. Hill: Yes.

Mr. McLean: I see.

Dr. Hill: Do not forget, the act was passed in 1975 and nothing has changed since that time. Other jurisdictions have changed their legislation, updated it, whatever, many times. We have not since 1975.

Mrs. Meslin: Sixty sounds like a tremendous number, but a great many of them are housekeeping. We have not done any housekeeping amendments, and a great many are just those.

Mr. Campbell: As long as we are not comparing it to British Columbia. As I understand, it is a very difficult situation in BC right now for the ombudsman.

Madam Chairman: Thank you, Dr. Hill, for summarizing your report. We will be looking forward to your comments over the next few weeks.

We are going to go on with the third item on the agenda. Mr. Bell will be providing us now with a bit of a briefing. New members will be very interested, I think, in how we are going to deal with the recommendation-denied cases. The members who deal with this on a weekly basis may not find that part so interesting, but let us go through the week, see what we are doing and what preparation would be advisable. I think the Ombudsman may have some input at this point. We have a variety of things going on this week, and then we will have any closing remarks that anybody has when Mr. Bell is finished.

Mr. Bell: Dr. Hill, perhaps you and Mrs. Meslin could stay, because one of the items towards the end of this briefing I would like to discuss in some detail today to see if we can accelerate the schedule or otherwise make the committee's consideration of it more efficient.

Members, would you all turn to the brief the clerk has distributed to you? At the beginning of that brief is the agenda for this week, as amended briefly before I arrived, plus the contents. The table of contents is organized as to subject matter that you will be addressing this week only, and it is organized chronologically to the best of our ability as the week progresses.

Items 1, 2 and 3 represent the only remaining recommendation-denied cases that the Ombudsman has reported in this fiscal year, including his annual report plus the special reports he recently tabled in the Legislature. I would like to spend some time, particularly with the newer members of the committee, in describing the committee's process in these recommendation-denied cases.

For those three items, the Ombudsman has said to the Legislature, "I have made a recommendation in a report to the ministry in question that it do such and so and that ministry has, for whatever reason, declined or denied me my request that the recommendation be implemented."

What you are about to embark upon tomorrow morning is the very last stage in the Ombudsman's process where he seeks the support of the Legislature through you in having his recommendation implemented. That process has been called a lot of things. Before we give it any names or call it any names, just let me remind you historically that the Legislature has given to this committee the responsibility of considering in detail the Ombudsman's report, his investigation and the governmental organization's position before deciding whether or not the Ombudsman's recommendation should be supported.

Some people have analogized this committee's process to sitting as the court of appeal or sitting in judgement of the Ombudsman's process versus the governmental organization's position. I do not think a label is that important. What is important is to understand that you are sitting, starting tomorrow morning, then all of tomorrow, half of Wednesday and for another part of a day later in the three weeks. You are going to be sitting and performing decision-making functions.

As committees do from time to time, you are going to be performing certain inquiry functions. You are going to want to know certain necessary information concerning each of these matters, both the Ombudsman's position and the governmental organization's position, before you decide, I guess,

effectively one of three things: whether to support the Ombudsman's recommendation and so recommend the adoption of same to the House; whether to agree with the position taken by the governmental organization in refusing the recommendation and thereby so reporting that to the House; or whether you take some other position that may be something between the Ombudsman's position and the governmental organization's position, or maybe something else that you consider to be appropriate.

Be reminded that the Ombudsman Act contains no sanction. The Ombudsman has no teeth, the academic's right. All he can do is make a recommendation. This process, while not giving the Ombudsman teeth, gives him an opportunity for maximum effectiveness, the effectiveness through this committee's consideration of his matter and, ultimately, the treatment by the Legislature of this committee's recommendations.

Let me just remind you further that this committee has a unique history and, standing as committees of the Legislature, it has had an extraordinary number of its recommendations adopted by the Legislature in specific ways. Those adoptions have resulted in governmental organizations taking very specific steps.

It is, I believe, still unique for committees of the Legislature to have their recommendations addressed that way. I believe the reason is that the Legislature historically and currently so supports the concept of the Ombudsman that it gives specific attention to your recommendations so that the level of effectiveness and the level of respect for the office will be maintained.

Anyway, that is the background of what you are about for the next day and a half to two days. The material in each of tabs 1, 2 and 3 represent the minimum documentation the Ombudsman is required to place before you in each one of these cases. If your schedules do not permit a thorough review of the material before the cases are considered by the committee, then may I commend to you as a minimum the Ombudsman's report in each of the three tabs. It is called the report made pursuant to section 22(3) of his act. It is the document that is always dated at the end, is signed by Dr. Hill and is generally styled report of the Ombudsman, reasons therefor and recommendations following his investigation into the complaint. Those reports are found in each of tabs 1, 2 and 3.

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Madam Chairman: Maybe we should just point out that page 39 is the one, where you can find it on tab 1. Is that right?

Mr. Bell: Unfortunately, tab 1 is an exception to the rule. Tab 1 is the good one to start with. If you would all turn to tab 1, I think I can assist you in a quick briefing.

The first document, which has no pages numbered, is a document inserted by the Ombudsman's office at my request, intended to be a vehicle of speedy briefing. If you review that document before you get into the rest, it will give you some basic background, which will make the following documentation more intelligible.

Tab 1 represents three separate complaints representing three separate fact situations, but representing really one issue, and that is why they have been combined. In addition to the synopsis at the beginning, perhaps you would

read—and you really only have to read one of these reports—the first report referable to Mr. K, which is found at pages 33 through 35 of the material. As I say, if time does not permit you to read any more, please read those two. If you go on and read the next two reports, pages 37 to 38 and 39 to 41, you will have a total overview, although the only addition in the other two is the fact situation.

If time further permits you, and you are prioritizing the material you want to read, would you read the documentation emanating from the Ministry of Health in this case? That will set forth in written form at least the position the ministry has taken.

Ms. Bryden: What page is that?

Mr. Bell: It is at various pages; for example, pages 25 and 26 of the material.

Interjection.

Mr. Bell: Yes, you are right. Page 51 is probably the most important and certainly the latest statement from the ministry on the Ombudsman's recommendations, being obviously less than two weeks old.

This is a good case to start with because the fact situations are very compartmentalized. The legal issues are fairly specific, i.e., whether companion travel allowances should be made available to persons who are over the age of 18 in Ontario as compared to the current ministry policy of making companion travel allowances or grants available only to those up to the age of 18.

Madam Chairman: Mr. Tatham, do you have a question?

Mr. Tatham: I am shy of page 51.

Mr. Bell: In the first tab?

Mr. Tatham: Yes.

Mr. Bell: The clerk will make sure that is available.

Madam Chairman: The most important pages.

Mr. Bell: I do not propose we talk about the detail today, but let me just describe for you what is going to happen. As the chairman indicated, when you arrive tomorrow there will be seating for four at the Ombudsman's side of the room. Dr. Hill and members of his staff will be on one of the sides and the governmental organization representatives, including Ron LeNeveu, one of the assistant deputy ministers of Health, will be there.

Mr. LeNeveu has appeared before the committee on numerous occasions before and is very helpful to the committee, and you will benefit by his attendance. He will probably be accompanied by some other members of staff, including one of the ministry lawyers.

The Ombudsman and members of his staff will review with you the substance of the complaint, their investigation, the conclusions reached, the recommendations made and the reasons therefor through questions, initially from me and then each of you in turn.

When that process is concluded, the focus is then shifted to the representatives from the ministry. They will describe to you through questions their position, the reasons therefor and any other appropriate explanation why the recommendation is not going to be implemented. The process includes questions, initially from me and then from you. When they are finished, the Ombudsman has a chance to reply, and oftentimes the ministry gets one last opportunity to put something on the record.

When that process is concluded, you should have all of the facts available to you and the documentation before you to permit you to make the following decision: Is this committee going to support the recommendation of the Ombudsman or not? You make that decision as soon as you finish hearing from the people. You adjourn in camera. There is no set time limit, but the rule usually is that if you cannot make a decision within 20 or 30 minutes, it is better to leave it for your next report. You invite the people to wait outside and you announce whether a decision is made or not. That will happen for each of tabs 1, 2 and 3.

The reason that all of the other documentation is there is that this committee has another item of responsibility, and that is to ensure or to consider whether there is a requirement for any general rules for the guidance of the Ombudsman in the exercise of his functions. The material is required to satisfy the committee that this investigation crossed all the t's and dotted all the i's, as the legislation requires.

Some may think it is a bit redundant, but let me assure you that, although not within Dr. Hill's tenure, there were times when the investigation and the documentation did not meet the requirement of the legislation. So that you may report back to the House each time that you do or you do not consider general rules are necessary, the material is there. Further, some of the documentation provides focus of certain information that is thought necessary to assist you.

Unless there are any questions about our so-called recommendation-denied process, I will go on. Obviously, tomorrow is Ministry of Health day. You are going to be dealing with item 1. The track record of this committee is it takes half a day to do a recommendation-denied case. My expectation is that we may be talking about item 1 for a few minutes in the afternoon, but it will not be so much as to create any real problems. Then in the afternoon we will be doing item 2, which is a very sensitive case involving efforts of the particular complainant through the Ombudsman's office for compensation in respect of in vitro fertilization procedures.

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The issue is actually quite simple. The Ontario health insurance plan fee schedule does not, under any context, underwrite the cost of sperm in an in vitro fertilization where the donor is not the spouse. The Ombudsman believes, for the reasons he has stated in his report, that it should, and the ministry has stated in its communications that it should not.

Again, as a minimum, I will read the synopsis at the opening of this material, the Ombudsman's report, which starts at page 20 of the material, and certain communications from the ministry, again in my material. It should be page 27, although it is not numbered as such; it is not numbered at all. Are yours numbered? Did I say 27? That is not right. Is the report page 20?

Mrs. Meslin: The report is page 20.

Mr. Bell: The letter I am looking at that you should read is a letter from the deputy minister to Dr. Hill, July 27, 1988.

Interjection.

Mr. Bell: Anyway, find the letter and give it a number. It is a good job we are doing this now and not tomorrow.

Madam Chairman: It is page 27 in my book.

Mr. Bell: I think it is page 27.

Madam Chairman: Is it dated July 27, 1988?

Mr. Bell: The Ombudsman.

Mr. Tatham: Martin Barkin; is that the guy?

Mr. Bell: Yes. I think that is the minimum material, although as I say, if you can review all of it, you will find there is duplication as you proceed through the material and therefore it eases reading.

You might also read the letter, starting at page 16, of July 8, 1988, from the Ombudsman to Dr. Barkin. I presume this letter is written in a style—in fact, I know it is—and content to implement a recommendation that this committee made last time about warning governmental organizations not to come forward with new information late or they will be shut out from bringing it forward. We will be talking about that perhaps tomorrow afternoon.

Then on Wednesday morning we will be dealing with, in relative terms, the most complex of the three cases, both factually and legally, the Ministry of Education matter involving a Mrs. H, and very specific and far-reaching recommendations of the Ombudsman as to amendments to the Teachers' Superannuation Act and specific recommendations dealing with the situation of the particular complainant. Again, if you would read the synopsis that is at the opening of the material, the Ombudsman's report is at page 62 of that material.

Mr. Elliot: I just want to underline a situation with respect to the new information we got into, as new committee members, last time when we began. We sort of did not listen to that bit of advice, and in a number of the cases that we heard subsequently there was new information presented. What you get into then is a judicial kind of situation and you start retrying the case. That is not the purpose of what we are here for. It is to take a look at the material that is presented in the binder and make a decision on principle, based on the information that is available to us.

I thought I should underline that, because as one of the new guys last time, I was one of the people who thought we should hear the new information. We opened the door and it really got us into some situations that were not very nice later on. I think there are five people here either substituting or new to the committee, so I think it is an important point that we do not get caught up in that this time, because it takes a lot of time and you really cannot consider it fairly. I just wanted to point that out.

Madam Chairman: We will keep a close eye on that this time, because I think we all agreed on that.

Mr. Campbell: I have a bit of difficulty in some of the teachers superannuation cases, because in my other life I was very active in dealing with the Teachers' Superannuation Act and I might bring some preconceived notions about the fairness and equity of that act to this committee. That might be a concern that I have, whether it is new information or not; some information I might have.

I guess I have to make that decision on how I use that material, obviously in the best interests of the people applying, but I am concerned about some of the things that are in here. That is why I am concerned about new information coming in and what that means to this committee.

Madam Chairman: There are two different issues. The new information that used to come in came in by the agencies that were before us. Quite often, it was information that had been requested by the Ombudsman over a period of a year or two years and never delivered until the day of the hearing before us. Quite often, it was not anonymized; the names were still in it.

We had to deal with a bunch of problems. The Ombudsman was not prepared to respond. I remember quite vividly Ms. Morrison sitting there saying, "I've never seen this before." Quite often, it may have been resolved before we came here if they had disclosed a little bit more information.

From your viewpoint, you do not hold any position now, as I understand it, with the fund.

Mr. Campbell: I do not.

Madam Chairman: Each of us brings our own independent knowledge into the committee. I can tell you that with the Workers' Compensation Board, Mr. Philip, Mr. Charlton, all of us have our own experience with personal cases.

This is an opportunity for you to set forward some of your views and I, as chair, will just keep in control of how relevant it is to this particular case. We welcome your expertise in this area, and I think we have other people who have an education background who might have some words of wisdom to bestow upon us. We will be deferring to your expertise, I am sure.

Mr. Campbell: Very well put.

Ms. Bryden: This is my first experience on this particular mandate or responsibility and I appreciate the briefing by Mr. Bell. I am not clear whether we do have the power or whether the Ombudsman has the power to recommend an actual refund, say, to the first three cases, where they did not get their trip for medical services paid. I notice in the last two cases, there is in one case an ex gratia payment recommended and in another case that the superannuation board pay to the applicant some sort of an allowance. Is it permissible for us to recommend reimbursement or compensation?

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Mr. Bell: Those questions you have just put are questions that must be discussed with the Ombudsman and with the governmental organizations over

the next day and a half. As a committee, you will give consideration to that, among other issues.

Let me answer it this way: the Ombudsman has historically made many recommendations to many governmental organizations that money be paid and refunded, whether it be ex gratia or otherwise, and the committee, when it deemed it appropriate and necessary, has supported those recommendations and so recommended to the House, and the governmental organization has ultimately implemented them.

The Ombudsman is able within the process, in appropriate circumstances, to make a money payment recommendation and it is implemented by the governmental organization. Where the governmental organization believes it lacks the legal ability to do it, it is usually very good in bringing that to the attention of the Ombudsman, and when they appear before you, they will explain their reasons. But you are right that those questions have to be put at the appropriate time.

Madam Chairman: Would you like to continue with Mrs. H?

Mr. Bell: Yes. As I say, I know Mrs. H is the most difficult of the three cases. The recommendations of the Ombudsman, I think it is fair to say, are more far-reaching than with the other two. There is a fair bit of law at the cornerstone of the conclusions and the recommendations. I think I will be more deliberate in the review of this case with the Ombudsman and his staff than perhaps with the other ones.

The other feature of this, of course, is that if you refer to pages 86 and 87 of the material, there is a letter from the deputy minister, Dr. Shapiro, which as far as I know is the latest statement from the ministry of its position. It seems that in one area the ministry and Dr. Hill are not far apart in terms of the act and a review of the act. I guess where the differences lie is in the specifics and the entitlement of the individual.

You will note there will be some reference to the Legislative Assembly Retirement Allowances Act, one I am sure is near and dear to all your hearts, and a similar prior provision that has been subsequently amended.

As I say, I urge probably a double reading of the Ombudsman's report on that one. We will have an interesting discussion on the law of the charter and a case I had something to do with, I see here.

Before we get to the rest of the week, I have something I must disclose. I act for the Ministry of Education from time to time on matters specific. None of them relate in any way, shape or form to the specific issues or facts. Dr. Hill and his staff have known that for quite some time. I guess the question has to be put whether anybody has a problem or concern with me participating with you in this. I guess it should be raised. Otherwise, I will continue to do my duty.

Mr. Tatham: What is the general rule? I have had no experience provincially. I know municipally we try to be very careful if a lawyer is acting for one municipality against a subdivider or vice versa. What is the general rule in the government?

Mr. Bell: I think the general rule of conflict of interest is basically the same: you do not serve two interests. The question is, I guess, whether legal counsel to the committee should participate in any way in a

matter that involves a ministry of the crown that counsel acts for in other contexts. The Ministry of Education has not raised the matter, and it has appeared before the committee in the past. I do not know specifically what Dr. Hill's position is on this case, although I presume, because it has not been raised, that they do not have a problem. It would seem to me if anybody has a problem it is Dr. Hill.

We can defer this until—when is it?—Wednesday morning. We should visit this discussion again briefly when the ministry people appear. If anybody has a problem or raises it, I can stand down. I have stood down before. In a matter involving the Royal College of Dental Surgeons of Ontario a number of years ago, I stood down. I would just go and have an early coffee and let you do it.

Mr. McLean: I just happen to believe that the complainant would be the one who would have the biggest problem of anybody, looking at it from the point of view of challenging what the Minister of Education (Mr. Ward) is saying. Here we have a solicitor who is acting for the Ministry of Education also being the solicitor for the committee questioning that individual. I do not know, but I think it is a touchy area for the committee and for yourself. However, I am willing to leave it until the morning and you could maybe determine whether you think it is right or not.

Mr. Tatham: I think we are all good, kind people, but just to keep it clean, the easiest way to do it is to say: "You're out of it. That's it. Goodbye and God bless you." Then there are no more troubles.

Mr. Bell: That is the easy way. The other thing, in fairness, is that I will speak to the Ministry of Education and the individual who is noted as scheduled to appear before you and raise the issue with her prior to Wednesday. As I say, it does not matter to me. Somebody mentioned the word "perception." Whenever you are dealing with it, it is really the perception test which dictates. You are not going to believe it, but I have a problem with the Ministry of Housing one, too.

Mr. Henderson: Maybe somebody can clarify this for me, but I do not see the conflict of interest. If you act from time the time for the ministry, and not in anything that has to do with this particular case, then I do not think there is anything that says a lawyer cannot represent different individuals who at some time or another may have a contest with each other, as long as he is not doing it at the time they have a contest with each other. I do not see it as being a conflict of interest.

Mr. Bell: I agree. There is not, I do not think, under any definition a conflict in fact. The point about the perception was raised. A lot depends on what the result is going to be, of course. People, human nature being what it is, sometimes adopt or formulate conclusions based on results. I am high on the list of people who do that.

There is not a conflict in fact. Not only do I act for the Ministry of Education, but because I act for a lot of boards of education, there comes a time when I have to be on the other side of the table and both parties know and understand and concur on that. But if the perception is a matter of some concern to the committee, I will be more than happy to stand down on this.

The other alternative, by the way, is that I can assist you in the open hearing in eliciting the necessary information and then absent myself when you deliberate the matter in camera so that there is no question that I have been

part of your in camera deliberation to a conclusion. That may be the sawoff position that is palatable to everybody.

1530

Mr. Campbell: I think the counsel has raised the issue himself, and therefore has given us fair—I am not a lawyer, so forgive the layman's terms—notice that there is a potential situation.

Having said that, I think we should go by his advice, and at the same time make a decision that perhaps in this case it may be in our best interests and his best interests that he do stand down. Again, I am not a lawyer in this thing, but I am guided by my previous municipal experience. If you think there is a conflict or a problem, you should not be part of the discussion. That may not be the same, of course, in strictly legal terms with client-solicitor privilege.

Madam Chairman: I hate to defer this too long.

Mr. Pollock: I tend to agree with Mr. Campbell, too, that he should stand down.

Madam Chairman: Can we wait on this until Wednesday morning? I think some of the members who have not been part of the process may not realize where Mr. Bell's role is in both the decision-making, the questioning and the opportunity really that the committee does have to question the different people before us.

Then on Wednesday morning we could make the decision, but give it some thought now as to what type of potential conflict you see that there might be and whether there are certain alternatives: first, that he could participate in the whole process; second, that he absent himself from the decision-making process, and third, that he stand down for the entire case.

If I can ask people to give that some thought, keeping in mind tomorrow when we go over the case, how much involvement you feel the counsel has. Then you will be more aware of it. Then we will ask for a decision Wednesday morning? Is that good?

Ms. Morrison: If the decision on Wednesday morning is that your counsel stand down altogether, as counsel has pointed out, this is the most difficult case, this one on Wednesday. It is quite complex. It is going to require someone to assist the committee, I think, in leading it through some of the questions that they may wish to ask us.

If the decision is left until Wednesday morning, there will be no choice about having someone substitute for your counsel. That might cause us some concern.

Madam Chairman: If I can just reply quickly to that, many committees go through cases without counsel. My thought is that we would not replace counsel if we decided today or tomorrow. We would just have to make sure we are prepared appropriately, and we will encourage that it be tomorrow.

Mr. Campbell: Not to prolong this, but I am wondering if in fact it would be in order to reorder the business of this committee and perhaps have the Ministry of Education come on Thursday. It would give us some time.

I am really concerned, as a new member of this committee, about leaving it in the hands of this very able committee, but also the fact that our counsel would not be there to guide us. I would be concerned that this whole matter be raised this quickly with a lot of fairly new people on the committee.

I am wondering if we could reorder this case to Thursday, allow everybody notice and then decide tomorrow, perhaps, what we are going to do in this case, and then allow Wednesday, if we are going to go with new counsel, to go with new counsel or change counsel, or whatever is going to happen. I am just a little leery being a new member—on the first day on the job kind of thing—that this is happening right off the bat.

Madam Chairman: In reply, I think our schedule is very tight. If we move this to Thursday then we are jeopardizing being able to deal with all our expanded jurisdiction hearings in the time that is required.

The second is, again, that we encourage committee members to prepare for cases. I think it would be inappropriate for us to find new counsel, with any amount of notice, in the next two weeks. I think that would be a difficult decision. We would have to find someone to free himself or herself up. To be able to participate in this process the way Mr. Bell has would be very difficult.

I would still entertain discussion on that. Mr. Bell has merely raised the fact that he has been involved in legal matters with the Ministry of Education. He does not perceive it, as I understand it, to be what he would deem a conflict of interest. The Ombudsman's office has not, to the best of my knowledge, on behalf of the complainant, considered him to be in a position of conflict of interest. It feels comfortable with him.

The decision now is whether the committee wants to look to Mr. Bell for assistance in this matter or to stand down. I think that is where the decision has to be. But in the event that Mr. Bell cannot act as our counsel, I think it would be inappropriate for us to bring someone else in. The committee will really have to take on the role of counsel and take on the role of making the decision in this case without any assistance.

Mr. Campbell: I recognize I am new in this process, but it raises the question whether or not this claimant would get from the Ombudsman or whoever the same hearing, the same fairness and equity and the whole thing without counsel being present. It is a very simple layman's question: Why would we have counsel for all these other cases and not for this one?

I am concerned that everything would be equally evenhandedly handled. Perhaps it could be held over to a future date if Thursday is not enough, and then we could deal with it at the end. I am just asking these questions. I realize that I am new in the committee, but it is a real concern of mine.

Mr. Bell: Mr. Campbell, can I respond? It might assist the other members as well. I think the question is fairminded.

The Ombudsman represents the complainant. The complainant has no status before you—a representative. The party who represents the complainant has said, "I don't have a problem."

I will raise the question with the ministry, as I intended to do in any event before Thursday, and will endeavour to get for you before Thursday, but certainly by Wednesday, the ministry's position. If they do not have a

problem, and frankly, I do not think they will, then you do not have a problem, because conflict of interest is just a weighing of the interest between the two sides of the issue. If the Ministry of Education expresses reservations, then I think you have something to consider in more depth and the issue that you raised about comparability of treatment before the committee could be discussed then.

I am raising it because it is my job to raise it. You had better find out about it before you do it than after. I do not foresee, frankly, that I will be used as an actor. I do not see that I will be kicked out of the box entirely. As a minimum, I think I can assist you in inquiring into all of the relevant facts. Whether I sit in a decision-making process or not is a matter, I think, for further discussion. I may volunteer on my own to absent myself, regardless of what the committee's views are, just so that I would be more comfortable doing that.

Let me report to you what the ministry's position is.

Mr. Tatham: I appreciate Mr. Bell's candour. I have not read the case; I know nothing about the case; I am fresh fish here; I know nothing about it; but I certainly want to make sure that when you are going to deal with people, you make sure it is right upfront and no funny work, because that reflects upon the Ombudsman and everybody else.

If this is a real dandy case, as the lady has said, then no doubt people will pay attention to it, so when it comes out that we go against the complainant, the story will come out in the Star or something else: "What are you doing? Here is a guy who did this or that."

I would say, watch it.

Mr. McLean: I think perhaps we could be overreacting to it. What Mr. Bell has said at the last, I think he will use his good judgement. I do not think he is here to gather information from both sides, and I would anticipate that when the time for decision-making comes he would probably do what he would deem to be the right thing, the decision would be made and that would be it. I think there is really not going to be a problem.

Mr. Elliot: Mr. McLean has pretty well said what I wanted to say about this matter. I think, on the basis of my experience with the committee so far, we need Mr. Bell's expertise to clarify the situation as the presentation goes on. If he or any of us decide as a decision time approaches that he should absent himself, I think we should make the decision at that time, but I cannot see any conflict at all, unless there was some involvement with the particular case, which everybody has said there has not been, so I cannot see any problem here at all.

1540

Mrs. LeBourdais: I was just going to say, certainly as a newcomer to the committee, that I would value Mr. Bell's guidance through this. When you say, for instance, that you have acted for the Ministry of Education, that paints a pretty broad canvas. I do not know if I have the right to ask you whether in acting for them it had anything to do with superannuation funds, etc., or whether it was an entirely different matter. If it was on entirely different aspects of education, I think that would help to clarify, at least in my own mind, that you were off in other areas.

Mr. Bell: No. That is a fair question. I have represented and do represent the ministry from time to time when it wishes to have status in certain matters before the court dealing with educational issues, and I have represented the ministry when it has been a respondent in certain proceedings of issues entirely unrelated. I have never represented the committee in matters involving superannuation or the act, interpretation thereof or any positions taken. They are generally educational, nonsuperannuation issues.

Mrs. LeBourdais: Certainly that very factor would clarify a great deal for me in making my decision.

Mr. Bossy: Just having sat with the committee for the last three years, I have found that we cannot really act and feel comfortable dealing with the cases without legal counsel. Mr. Bell has been of tremendous value to the committee. I know he has also been of great value to the Ombudsman people, because the communications has been very good.

I also accept the fact that Mr. Bell would never put us in a position to discredit the committee in dealing with a case. I am sure when Mr. Bell comes back on Wednesday morning after he has discussed it with Education, we will feel more comfortable in making a decision. I feel comfortable in accepting whatever our legal counsel is going to tell us, but please, I have just gone through it briefly, knowing all the cases, let us not go into the process without legal counsel.

Ms. Bryden: The fact that Mr. Bell has not dealt with any teachers' superannuation cases is certainly an important factor in this particular situation, but he has told us that he will make up his mind in the next day or two whether he himself personally feels he has a conflict. In that case, I think we have to consider the rights of the applicant—or do you call it client—the rights of the person whose case we are considering.

I do not think it is right for this committee to deal with that person's case without legal counsel. I do not think it is fair to him and, therefore, I think the alternative we face is postponing the case until some time when another counsel can be obtained, if Mr. Bell should decide he has a conflict of interest, but I do not think the alternative of going ahead without counsel is something we should consider. I do not think it is fair, as Mr. Bossy says, for this committee to deal with that case in a different way than it is dealing with the other cases. Therefore, I think we have to face the fact that if Mr. Bell decides he has a conflict of interest, as he has every right to decide on his own, we have to postpone the case. I think that is very unfortunate for the client, as well.

Madam Chairman: Are there any final comments? Just give me a moment. In discussions with Mr. Bell, he is going to try to get back to us earlier on tomorrow with a decision on this so it will not be left until Wednesday morning.

Mr. Bell, could you just sum up the remaining business? Do you have a point, Mr. McLean?

Mr. McLean: Do you want a motion to adjourn?

Madam Chairman: I am coming to the motion to adjourn.

Mr. McLean: Oh, OK.

Madam Chairman: First, Mr. Bell has a few final remarks on the week. How about that? We almost had a motion there about how quick you are going to speak.

Mr. Bell: The last item is the subparts of part 4, some of which are blank. With reference to the table of contents at the beginning of the brief, the label is "Matters Outstanding from Previous Reports." What that means is that because you have an ongoing function as part of your previous hearings, there are recommendations which you and/or the Ombudsman have made, some as recent as the last time you sat, to governmental organizations which, as of the preparation of this material, have not been implemented. What you will be doing on Wednesday afternoon is, if you will, getting progress reports on what has been implemented and what has not been, and making decisions on what should be done.

The one exception is the last item, the Ministry of Housing. You do not have that part of the schedule yet. That is currently scheduled for August 22, a Monday, at the request of the Ministry of Housing.

That case is somewhat unique in this committee's history. Seven years ago, I believe, the Ombudsman in his report, and subsequently to this committee, reported that this was a recommendation-denied case that he had subsequently resolved with the ministry. There was even a communication passing from the governmental organization to the committee through me describing the resolution, if you will. The committee, you, in your then-report, commented on the resolution and commended the Ministry of Housing for resolving it.

If you examine the material in this part, you will see that that resolution has not taken place. In fact, there is an offer—I do not know whether it is on or off the table—from the Ministry of Housing to the Ombudsman representing half of the dollar value of the implementation, exclusive of interest.

This is something, again, I would like you to think about over the next day or two. It is scheduled to be heard by you on August 22. Mrs. Meslin, you can correct me if I oversimplify or misstate your position. The Ombudsman's position is quite simply: "Hey, I reported to you something that was resolved seven years ago. I believed that it was resolved all along and I now find out by recent communication that it's not going to be resolved. I want you to enforce that resolution or I want you, committee, if you will, to report and recommend to the House that the resolution be implemented."

The Ministry of Housing's position is, I think, fairly stated: "We want to talk about the merits. We want to go back, and we are going to ask you, committee, to review the Ombudsman's report in which he made the recommendation."

You have a preliminary issue to determine in this case. Are you going to merely consider the matter on the basis of the resolution—"Why is it not resolved, Ministry of Housing?"—and then make your decision, or are you going to get into the detail and the merits of the case, like any other of these recommendation-denied cases that we have just talked about? If you decide the latter, the Ombudsman's office has already put the committee, through the chairman, on notice that it is going to need more time. It will not be ready to go on August 22.

I have not raised this with anybody before now, and my apologies for not doing so, but I thought of it on the way up. I would like you to consider visiting the question of the extent to which you are going to deal with the matter before August 22, because if you decide you are going to get into it in detail, then you can wipe that off the schedule and substitute something else. If you decide that you are, then on August 22 you can get into the detail of that.

If that is not a practical solution or suggestion, tell me now, and I will shut up.

Mr. McLean: Say something.

Mrs. Meslin: Are you asking us?

Mr. Bell: Yes.

Ms. Morrison: Our view of the matter is that it is inappropriate to reopen the thing on the merits, which is what we have put to the chairman in Dr. Hill's letter of today's date, which we would like the committee members to consider when they are considering the question of the extent of review.

Mr. Bell: Let's leave it on for the 22nd, because I think that is going to take some time and there is no sense visiting it in a preliminary way.

You are not going to believe this—

Ms. Morrison: No, I am not.

Mr. Bell: —but I have been informed by the Ministry of Housing that in 1972, a former partner of mine acted for the surety.

Mrs. Meslin: For the surety?

Mr. Bell: Or a guarantor of the surety. The Ministry of Housing has also indicated it has no objection if I continue to act. I have not examined the detail of that to determine whether there is a conflict, and I will, but it is academic now, because if you decide to go into the merits of this case, you are not going to deal with it in the next three weeks. That gives everybody ample time to make the decisions that are necessary.

Please believe me, I do not represent everybody in the world. It is just a very small world.

Madam Chairman: May I make a suggestion? I have given this some consideration, and I have discussed it with the Ministry of Housing and have new information today. I suggest that they do come before us on August 22 and that we question them, as we have, and Mr. McLean usually takes the lead role in this in a most assertive manner, "Why haven't you done that yet?" I am sure he will take that role again.

When they go into the explanation, if it appears as though their explanation, which may be a short one at that time, is one that we would like to delve into further, I suggest we make the decision at that time. Without hearing why they want to go into the merits again and why they have waited some eight years, I think it would be inappropriate for us to decide without hearing, at least, their immediate reply to that question. I would propose that on August 22.

Ms. Morrison: Can I clarify that if the matter is just going to be dealt with as a not-implemented recommendation, there would not be any question of a conflict. Is that right?

Mr. Bell: No, there is no question, because the committee has not dealt with the merits.

Madam Chairman: We are dealing with why it has not been acted upon in being implemented.

Mr. Pollock: What is this case called?

Madam Chairman: It is C Ltd. It is in the contents of your book. It is under 4(B)(iv). I do not know whether you have any material on it. Yes, there is one letter. If that is acceptable, I think we should go ahead on August 22. If it looks as though we want to delve into it further, we can do that later.

Mr. Bell: That is fine.

Madam Chairman: Anything further? OK. Just in closing, please keep in mind, for the new members, that if slips are made with mention to names, we should not repeat them. We had some problems in our last hearings where disclosure was made of the complainants. We do try to keep that anonymous, and we should not further that at all.

Read tabs 1 and 2. I would ask that committee members please wait until the argument presented by the Ombudsman's office is complete, write down your questions and then we will commence questioning. Sometimes people are anxious, in their zest to be lawyers, and jump in very early on. It lacks continuity. Since we are dealing with some complicated cases, if you can hold your questions until the end of the remarks, there will be an opportunity to question before the ministry starts its presentation. If you can, try and hold those questions, write them down and there will be ample opportunity for everyone to ask as many questions as you want.

Mr. Bossy: There is a question I may have to look into concerning that Housing case. As parliamentary assistant to the Minister of Housing, I may find myself in an uncomfortable position with the ministry.

Mr. Bell: There is long-standing precedent for that. In fact, in 1976 the first item this committee dealt with was the North Pickering matter involving the Minister of Housing, and one William Hodgson, God bless his soul, then parliamentary assistant to the minister, sat on the committee and nobody blinked of a conflict. I would not be concerned for you, sir.

Mr. Bossy: I am not overly concerned.

Mr. Bell: No, I know.

Madam Chairman: Any further discussion? If not, we will see you at 10 o'clock tomorrow.

The committee adjourned at 3:56 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S RECOMMENDATIONS DENIED

TUESDAY, AUGUST 9, 1988

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Bryden, Marion (Beaches-Woodbine NDP)
Carrothers, Douglas A. (Oakville South L)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
Mackenzie, Bob (Hamilton East NDP)
McLean, Allan K. (Simcoe East PC)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella
LeBourdais, Linda (Etobicoke West L) for Mr. Carrothers
Tatham, Charlie (Oxford L) for Mr. MacDonald

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. Daniel G., Ombudsman
Morrison, Gail, Director, Investigations

From the Ministry of Health:

LeNeveu, Ron, Assistant Deputy Minister, Corporate Administration
Sharpe, Gilbert, Director, Legal Services Branch
Gibson, Malcolm, General Manager, Health Insurance Division

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, August 9, 1988

The committee met at 10:08 a.m. in committee room 1.

OMBUDSMAN'S RECOMMENDATIONS DENIED
(continued)

Madam Chairman: Can we call the meeting to order, please? Dr. Hill, are you going to make an opening statement?

Dr. Hill: I have a brief opening statement.

Madam Chairman: OK. We will hold off on that. Mr. Campbell first.

Mr. Campbell: I wonder if it would be in order to hear all three cases as one, given that there are inherent similarities in the cases and, in the interest of time, it might save some of the debate being repetitious..

Madam Chairman: We plan to do that.

Mr. Campbell: OK. Thank you.

Madam Chairman: Keep in mind that we are dealing with three different people in the first case.

The other thing is that we have had a change in our agenda from the one that is before you with regard to tomorrow. On Wednesday morning we have the Ministry of Education on your current agenda, the case of Mrs. H and the Ministry of Education. Your new agenda will reflect that case being moved to August 22. Mr. Bell will make a few comments on that.

Mr. Bell: I had discussions this morning with senior representatives of the Ministry of Education, first concerning the matter we discussed yesterday, i.e., my representing the ministry on matters in the past, currently and, hopefully, in the future. I have been advised that the ministry does not perceive a conflict, nor does it have any concern or objection to my participation. I thank the ministry people for responding so quickly in that regard.

Second, at their request and with the consent of Dr. Hill and his staff, the matter of the ministry recommendation-denied case is being deferred until Monday, August 22, to be heard immediately after the Ministry of Housing matter.

The reasons for that are substantially as follows: The chairman of the Teachers' Superannuation Commission is on vacation and will not return until tomorrow. There is a meeting of the commission scheduled for this Thursday. At the request of the minister's office, this matter will be placed on the agenda of that meeting and discussed at that time. The ministry will therefore have a fresh position to discuss after Thursday, and that will be an advantage compared to its position currently.

The Ombudsman's office and the ministry will get together in however

many meetings it takes between now and August 22 to try to further distil the issues in this case, the ideal being, if it is not resolved, to come to you with an agreed statement of facts and issues so that the now seemingly complex factual and legal issues can be further refined and simplified for us.

Of course, any developments in any other contexts can be reported to us on or about that time, so you do not need to read up on that tonight.

What we will be doing tomorrow is completing any holdovers from today. We will deal with the remaining matters in the report as referenced in the agenda, and then I will probably start the briefing on the expanded jurisdiction issue briefly tomorrow. I think I can do probably the first matter on the agenda, and that is, given the current legislation and the judicial decisions, what is the Ombudsman's jurisdiction and how is it determined in specific circumstances?

Ms. Bryden: That statement by Mr. Bell is very interesting in that he has consulted the ministry on this, but I must confess that I have been having second thoughts on the question of conflict of interest. While the ministry may not be unhappy, the question is, will the client be unhappy or will this committee be unhappy at having a person dealing with the Minister of Education when he has also worked for the Minister of Education in other capacities?

I think now, as was said yesterday by several people, it is better to have no appearance of a conflict of interest. Since it is now moved to August 22, I think there would be time to find another counsel for that particular case. I wonder if we should consider that, or if the committee members should set aside a time to discuss this at a little more length.

Madam Chairman: Thank you for your remarks in that area. Since we will have a considerable amount of time tomorrow that has been freed up and we do have ministry officials here now from the Ministry of Health, an unrelated case, I think it would be appropriate if we press on with the cases on our agenda today and I will endeavour to make some time tomorrow afternoon, because it was discussed, not hotly, but a lot of discussion went on about this issue yesterday. My concern would be that it would go on at length today to be discussed properly and we would get behind for those who are waiting.

If acceptable, I would suggest that we do put it on the agenda tomorrow afternoon and that we discuss it at that time, since we have that additional time until August 22.

I just want to thank the Ombudsman's office for agreeing to this delay. I think we should be cautious about this, because the ministry has been advised of the agenda for some time now and I would have appreciated it had it come forward before this morning with the circumstances of why it would like a delay. I think we are going to have to keep in mind something that Mr. Elliot put yesterday, which was this new information that the committee has before it, in introducing your information.

I want to caution perhaps now in discussions that you will have to indicate to us when new information comes forward that is not in our books already. The continuance does not mean that they have an extra two weeks to bring in new information. If you would keep in mind when you are discussing with them to inform them of that, I would appreciate it.

We are dealing today with tab 1. As has been mentioned, there are three

cases: Mr. K, Mr. L and Ms. M. It is to do with the Ministry of Health. Dr. Hill, do you have some opening remarks?

Dr. Hill: Yes, I will make a very brief statement and then Gail Morrison, our director of investigations, and Eleanor Meslin, the executive director, will carry the case on my behalf.

All of these complaints deal with the Ministry of Health's northern health travel grant program. In each case, application was made for a companion travel grant. The purpose of these grants is to provide funding for a companion to accompany a patient who must travel from northern Ontario to a major centre in southern Ontario for medical services.

In each of these cases, the grant was denied as not coming within the terms of the travel grant program, although one complainant is blind, another is elderly and a third is disabled. In my view, the denials were unreasonable.

As I said, my director of investigations will provide you with details on each of these cases and advise you of the information we obtained from the ministry about this program.

As you will see, the ministry's responses to my possible conclusions and recommendations and my final report were brief indeed. On the basis of the information they provided to me, I felt that I had no alternative but to confirm my tentative conclusions and recommendations. As you will see, I have recommended that the regulation providing for the grants be amended to remove the restrictions which have resulted in the denial of the grants in these complaints.

Gail Morrison and Eleanor Meslin will take it from here.

Madam Chairman: All parties to this proceeding may certainly come and sit at the bench. I am not sure who is going to take the two seats for the Ministry of Health. Mr. LeNeveue?

Mr. Bell: I can assist; Ron LeNeveue, Assistant Deputy Minister of Health.

Madam Chairman: Is Mr. Gibson coming forward?

Mr. LeNeveue: Gilbert Sharpe, the director of legal services.

Madam Chairman: OK. If you require any of the other people you have brought with you today, I would ask, if they are responding, that they come to the desk and be on the record in front of the mikes. There may be some musical chairs going on, but we would appreciate your bearing with us.

Gail Morrison, who is director of investigation at the Ombudsman's office, will be presenting this case. As I indicated yesterday, I hope Ms. Morrison has the ability to present her case with minimal interruption, except from counsel, until she has completed. Then we will have it open for multiple questions at that time.

Mr. Bell: As this is the first case of this round of hearings, and because a number of new committee members are not familiar with the Ombudsman process, while it is a little more deliberate, I think in the overall exercise, and even for next week or later this week, I would like to go through the documentation for identification purposes. Then I will leave it to

you to present your submissions as for the facts, conclusions and opinions. Is that all right?

Ms. Morrison: Yes.

1020

Mr. Bell: Members, it will assist you if you can follow along. We will just let our fingers do the walking through these pages.

At page 2, Ms. Morrison, can you identify this document please?

Ms. Morrison: Page 2—so numbered in my book, which I hope is the same numbering you have—is an interview summary setting out the complaint of Mr. K. Mr. K was interviewed in the Thunder Bay office and this memo summarizes his complaint.

Mr. Bell: Does this memo represent a common practice in your office after a complainant is interviewed in person?

Ms. Morrison: Yes, it does, especially when he is interviewed in a regional office.

Mr. Bell: I take it that pages 3 and 4 are the interview summary for Mr. L?

Ms. Morrison: That is right.

Mr. Bell: And page 5 is for Ms. M?

Ms. Morrison: Right.

Mr. Bell: If you would note, and you can answer later on as you are advised, the K and L interview summaries are dated in June and September 1987 respectively, whereas Ms. M is dated July 1985, some two years earlier. All of the 22(3) reports are dated in 1988, July, I believe. Would you give the committee some explanation of why it took two years longer for Ms. M?

Ms. Morrison: Yes. We have included in our documentation a memorandum, found at page 6, which states that this file, being a regional file, was inadvertently misplaced. When the issue came up again in 1987, we had a reference to the issue and therefore collected this file in with the others that deal with the same issue. But it is true that this was a 1985 complaint.

Mr. Bell: How long was it lost?

Ms. Morrison: The memorandum on page 6 is dated March 25, 1987. The original interview was in July 1985. The March 25, 1987 memorandum would indicate when the file was found.

Mr. Bell: Was it lost the day of the interview?

Ms. Morrison: There was no further work done on it from the day of the interview, so we cannot really tell.

Mr. Bell: Page 7 and page 8, I take it, represent some background material that was obtained by or provided to your office?

Ms. Morrison: That is right. In the case of Mr. L, these were letters of information he had received which we include here so that members of the committee can understand the refusal he received relating to the northern health travel grant.

Mr. Bell: Pages 9 and 10?

Ms. Morrison: Page 9 is our notice of intention to investigate, which was sent to the deputy minister on Mr. K's case in July 1987.

Mr. Bell: That has been nicknamed your 19(1) letter?

Ms. Morrison: That is right.

Mr. Bell: So whenever 19(1) letters are referred to in the committee, this type of letter is what we are talking about, which sets out as far as your office has been able to determine the substance of the complaint, notification to the governmental organization of an intent to investigate and whatever else you believe is appropriate in the circumstances.

Ms. Morrison: Right. To clarify for the committee members, the letter at this stage that gives notice of intention to the ministry provides the ministry with the contentions as set out by the complainant. These are not the Ombudsman's views in any way. This is a notice to the ministry setting out the complainant's contention.

Mr. Bell: Pages 11 and 12 represent the 19(1) for L? Is that right?

Ms. Morrison: That is right.

Mr. Bell: Pages 13 and 14 are for M?

Ms. Morrison: That is correct.

Mr. Bell: Page 15?

Ms. Morrison: Page 15 is a response to the Ombudsman to the notice of intention to investigate on Mr. K's file. Pages 17 and 18 are the same for Mr. L and pages 19 and 20 for Ms. M.

Mr. Bell: Is it fair to say that represents the preliminary stages of an investigation: the exchange of the 19(1) and the 19(1) response?

Ms. Morrison: That is correct.

Mr. Bell: The next document we see at page 21 is dated March 14, 1988, some months later. Can you identify this document, please?

Ms. Morrison: Yes, this is a letter that we call the 19(3) letter. In these particular cases, we combined the cases of Mr. K, Mr. L and Ms. M in this letter because the issue that was being presented was exactly the same in all three.

This letter provides the ministry with notification that the Ombudsman may be about to make a conclusion and recommendation which is adverse to the ministry. Subsection 19(3) of the Ombudsman Act provides that the Ombudsman must give the ministry notice of such a possible adverse conclusion and recommendation and provide the ministry with the opportunity to make

representations to the Ombudsman.

Pages 21, 22, 23 and 24 are the Ombudsman's notice of his possible conclusions and recommendations and include an explanation of the reasons he may be about to make the conclusions and recommendations set out on pages 21 and 22.

That is a 19(3).

Mr. Bell: Whenever we refer to 19(3) letters, this is the form we are referring to and for the purpose that you have described, is that correct?

Ms. Morrison: That is right.

Mr. Bell: In general terms, is it fair to conclude that your investigation is in the late, almost-complete stage before you send these 19(3) letters?

Ms. Morrison: It usually is. On rare occasions we will receive information as a result of a 19(3) which will reopen the investigation.

Mr. Bell: I must say that the time between the 19(1) letter in the two cases and the 19(3) letter is one of the shortest I have seen. Do I take it that means the investigation of this case was relatively straightforward and uncomplicated?

Ms. Morrison: It was relatively straightforward and uncomplicated in that we did not obtain a great deal of information. As you will see from the 19(3) letter, we did have some meetings, we did attempt to get documentation providing the background for this particular program, and when we had obtained all the information it appeared we would get, then we went on to the 19(3) letter because there was no further information that we could see we were going to receive.

Mr. Bell: OK. Page 25?

Ms. Morrison: Page 25 is the ministry's response to the 19(3) letter. This is what is provided for in subsection 19(3). The ministry is provided an opportunity to make representations to the Ombudsman, outlining why the ministry feels he should not finalize his tentative conclusions and recommendations. This is the Ministry of Health's representations on the 19(3).

Mr. Bell: And page 27?

Ms. Morrison: Page 27 is the letter which accompanied the final report. Having reviewed the ministry's letter at pages 25 and 26, the Ombudsman found no reason in that letter to change his tentative conclusions and recommendations and, therefore, went ahead to finalize his report.

The letter of June 30, which is somewhat longer than would usually have been the case with our final reports, is a result of this committee's deliberations last time in which the committee expressed some concern that ministries might not have sufficient information about our process. It was felt at the last committee hearings that perhaps the very short covering letter that went with the final report did not give the ministry enough information about what the consequences of such a final report would be.

Therefore, on the advice of the committee, we have changed our letter

which accompanies the final report to outline to the ministry what the consequences of such a final report are and to stress that any information which the ministry does not provide in the process of answering either the 19(3) or the final report will not be considered by the committee at a later date.

To be absolutely sure there was no misunderstanding, separate letters were sent at this point on each of K, L and M, which takes you to the end of page 32.

1030

Mr. Bell: Pages 33 to 35?

Ms. Morrison: From page 33 actually all the way up to page 41 are the separate reports in each of the cases.

Mr. Bell: With the exception of the facts, the reports are identical?

Ms. Morrison: That is correct.

Mr. Bell: In the reports, as a matter of your office's practice pursuant to the legislation, you set out the relevant facts determined during the investigation, the opinions the Ombudsman has reached pursuant to those facts, the conclusions he reaches pursuant to the opinions and the facts, and last, the recommendations he makes pursuant to subsection 22(3) of the act.

Ms. Morrison: That is correct.

Mr. Bell: This is the document which we, in our short form, have labelled the 22(3) report?

Ms. Morrison: That is correct.

Mr. Bell: When we refer to recommendation-denied cases, we are referring to the denial by the governmental organization of the recommendation contained in this report?

Ms. Morrison: That is right.

Mr. Bell: I do not want to get to the detail yet, I would just like to quickly complete the following documentation, because some of it does have relevance to the committee's procedure. Pages 42, 43 and 44 are what, Ms. Morrison?

Ms. Morrison: Those are covering letters to the complainant in each case enclosing the final report. Once the matter has been concluded with the final report and any responses the ministry might wish to make to the final report have been allowed for, if sufficient time has passed, the Ombudsman can forward the report to the Premier (Mr. Peterson). At that time, we close our file and forward to the complainant a copy of the final report. These letters are the covering letters to the complainants enclosing the final reports.

Mr. Bell: Just for chronology, the final report is dated June 30.

Ms. Morrison: That is correct.

Mr. Bell: It was sent to the minister or the deputy on June 30.

Ms. Morrison: That is right.

Mr. Bell: You wrote to the complainants on June 22 saying, "Nothing has happened, so I am sending it to the Legislature and the committee." Then at pages 45, 46 and 47, on July 21, you write to the Premier.

Ms. Morrison: That is right.

Mr. Bell: Would you explain to the committee members the purpose of that letter?

Ms. Morrison: Yes. The Ombudsman Act requires the Ombudsman to forward to the Premier any final report he is going to bring to this committee's attention, or to the Legislature's attention and hence this committee's attention. The letters at pages 45, 46 and 47 are the covering letters to the Premier enclosing the report. It is usual for us to get a simple acknowledgement from the Premier saying that the reports have been received. That is a pro forma step before your committee can consider these reports.

Mr. Bell: I have not seen one. Has there been a response from the Premier to those letters as yet?

Ms. Morrison: There has not been any acknowledgement. We did attempt to find out whether an acknowledgement was coming, but in the summer months it is difficult. I think we just have not received it.

Mr. Bell: Would you explain to the committee what the usual response is?

Ms. Morrison: The usual response is just a letter acknowledging the Ombudsman's report and thanking the Ombudsman for passing on this information to the Premier. There is no consideration of the merits of the case by the Premier's office.

Mr. Bell: For members of the committee, it has only been utilized once to my knowledge. In subsection 22(4) of the legislation, the Premier is potentially set up as the last mediator between the Ombudsman and the governmental organization. It is the last opportunity before it goes to the Legislature for the government, if you will, to involve itself to attempt to resolve any impasse. The usual response by the Premier's office is, "Thank you," and to acknowledge the letter and let the process unfold, as it usually does. It is always available, but rarely used.

I guess pages 48, 49 and 50 are letters to the minister.

Ms. Morrison: That is right.

Mr. Bell: For information?

Ms. Morrison: That is correct.

Mr. Bell: I take it from June 30 to the date of this letter—I should not say that because, coincidentally, at page 51 there is a receipt of a letter.

Ms. Morrison: Received July 28.

Mr. Bell: Received July 28. Is this letter the only response received by your office to the reports to date?

Ms. Morrison: Yes.

Mr. Bell: OK. The remaining correspondence, is it—

Ms. Morrison: We forwarded that response to the Premier, which is 55, because it is part of the process that the Premier receives not only our report but any response that the minister has made to that report.

Mr. Bell: So these remaining letters merely complete the file in that regard?

Ms. Morrison: That is right.

Mr. Bell: All right, back to the beginning. Does that represent a fairly typical process of investigation by your office of a governmental organization.

Ms. Morrison: It does in terms of the chronology. I think one atypical thing about this particular investigation is that the responses from the ministry are quite brief, and I will be speaking about that as I am explaining the details of these cases.

Mr. Bell: The other thing is obvious, but let us state it for the record. Those documents do not represent all of your file on the three matters?

Ms. Morrison: No, I have the files here.

Mr. Bell: Now if we turn back to the beginning, you have prepared at my request three synopses respecting these cases?

Ms. Morrison: That is right, they are the unnumbered pages that are just in front of page one in your binder.

Mr. Bell: Just for clarity, these represent your position; they are not intended to represent a joint position of the ministry and the Ombudsman as to the facts and the issues.

Ms. Morrison: That is correct although we would usually like to do that in the best of all possible circumstances. In this case there was not time to consult with the ministry about an approved statement of the facts and issues, and at your request this was prepared to outline our position only.

Mr. Bell: Would you then, in the manner that you have prepared the review with the committee, the substance of the complaints, the results of the investigation, the opinions, conclusions reached with reasons therefor, and finally, the recommendations of the Ombudsman? Bear in mind, we have all agreed that we are going to be hearing these jointly, so the only separate issue is the factual one.

Ms. Morrison: Right. The facts in these cases are very simple so I will not take up very much of your time with the facts. I think the—

Mr. Bossy: Forgive me for interrupting, but as we were going through the chronology here, I find in the letter, on page 16, because of the deletion of names and I am just wondering the names that does appear—

Mr. Bell: The gentleman on this is a gentleman who will be appearing before you as a witness in any event, being the general manager of OHIP—

Ms. Morrison: No, it is above that.

Mr. Bell: Oh, I am sorry.

Mr. Bossy: Should that be deleted?

Mr. Bell: Members of the committee, at page 16, first paragraph, last word in the paragraph would you please delete it in your copy and all of those present. Please not—

Madam Chairman: If I could just remind also the ministry officials although I do believe they have been before us before, anonymity is something that we closely guard. While your documentation may not blank out, please refer to the letters that have been assigned to each name. Be cautious. We charge cookies for every error that is made. Thank you.

Ms. Morrison: Thank you, Mr. Bossy. I am afraid we missed one. It never fails. OK, briefly the facts and the cases. The easiest place for you to scan the facts is in the synopses that are supplied at the beginning.

The first one, Mr. K, which is the very first unnumbered page you have, as you can see, was a resident of northern Ontario who was referred to a specialist in southern Ontario to undergo open-heart surgery. His physician and his specialist both recommended that his wife accompany him to southern Ontario for the surgery. He applied for a companion travel grant and was denied. I will go into some of the conditions on the travel grant once we have gone through the facts of each of these cases.

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Turning over three pages, we have Mr. and Mrs. L. Again, Mr. and Mrs. L are senior citizens. Mrs. L is legally blind. She was referred to a specialist in southern Ontario and had to travel to have a laser treatment in connection with an eye problem she has. Mr. L wished to travel with his wife to assist her in this trip, and again, her application for the companion travel grant was denied.

The third case is Ms. M. She had received a number of travel grants prior to this complaint arising. Since the age of 14, she had to travel from her home in northern Ontario to a southern Ontario location for specialist treatment of her hips. She had one hip replacement and the other hip required attention. Up until the time she was 18, her parents could travel with her on a travel grant, but once she was over the age of 18, because of the conditions on the program, she was denied the travel grant.

In each of these cases, the complainants came to us feeling that the conditions that were set in the Ontario travel grant program were unfair, because they required someone to accompany them, at the recommendation of their physicians, to get medical treatment at a centre a long distance from their homes. They felt that the northern health travel grant program should apply to their situations, as it does apply to those accompanying children under the age of 18.

When we began to investigate, of course, our question to the ministry, as outlined in the complainants' contentions and as part of our investigation,

would be an attempt to find from the ministry some explanation of why the northern health travel grant program would provide accompaniment for children under the age of 18 but would not provide it in cases like these, which seemed to the Ombudsman, at least tentatively in his section 19.3, to be cases that needed this kind of assistance.

Our investigation was relatively brief. We requested information from the ministry. We obtained background information about the travel grant program, and as outlined in our section 19.3 letter, which is at page 22, we found out some of the background about the program. The program was designed by the ministry so that there would not be a need for discretion on the part of administrators of the program. They therefore wanted some fairly firm rules about who would get what kind of assistance.

We requested information as to whether there would be some way of providing—for example, on the advice of a physician—the necessary grants for people who did not fit within the under-18 category. However, there was some concern expressed by the ministry and a ministry representative that this would not be a fair decision for a physician to have to make, especially in small communities where the physician might be a friend of the family.

We did obtain some documents which were background material for the development of the program, but these documents did not provide us with any reason which Dr. Hill felt, at least tentatively, could justify the denial of the grant to people who needed accompaniment, as did our complainants. Therefore, we wrote to the ministry the subsection 19(3) letter saying, "This is the information we have on this program. There's nothing in this information which leads us to understand why these complainants should be denied this kind of assistance," and asked the ministry for its views. As you will see on page 25, the ministry's views were brief.

They explained what the documents were that we had noted in our subsection 19(3) but gave us no further information about the background to the decision to restrict the travel grants to children under the age of 18. They did note at page 26 that the northern health travel program continues to be under review, and of course the companion grants as a part of the program would also be under consideration. They did not, however, provide us with any information which would suggest that the review would result in any changes or with any further information than we had obtained to date on the program which could provide Dr. Hill with the reasons he needed to change his initial tentative conclusions and recommendations. Therefore, he considered the matter again, having received this response at pages 25 and 26, and decided that it did not cause him to change his mind, and he therefore issued the final reports in this matter.

Again, we did not receive a response from the ministry until July 25. That response is at page 51 of your documents. We had mentioned in our subsection 19(3) letter, which was in March, that one of the grounds the Ombudsman found for finding the program unsatisfactory was that it appeared to discriminate on the basis of age: It provided for grants for people under 18; it did not provide grants for people who might be otherwise similarly situated—that is, need to travel a long way for medical attention—who were over the age of 18.

Therefore, we had suggested in our subsection 19(3) letter that one of the reasons for Dr. Hill's dissatisfaction with the program was that it might be regarded as discriminatory under section 15 of the Charter of Rights and Freedoms. No mention was made of that particular conclusion in the ministry's

first response to us, but in the July 25 letter, at page 51, the ministry does note that we had mentioned that and suggests that a legal opinion should be obtained from the Ministry of the Attorney General concerning this particular question.

It was Dr. Hill's view that if such a legal opinion had been necessary, it perhaps should have been obtained much earlier in the process. He therefore did not find the response you see at pages 51 and 52 to be adequate and appropriate as the legislation requires, and our process to bring this matter before the committee continued.

The issue is a very simple one, as you will see from this documentation: the question of whether the travel grants should extend to people who are over the age of 18 and are required to travel for medical treatment. As you see in the documentation, there is very little information upon which you could make your decision as to whether Dr. Hill's conclusions and recommendations, as set out in his report, should be supported by this committee.

The committee, in its sittings last January, was very clear that when a ministry came before it to present its position on Dr. Hill's report, the committee would not be interested in hearing from that ministry information that had not been provided to us in the course of the investigation. Therefore, you have before you only the information that is here. The ministry officials will be prepared to explain it to you, perhaps, but I believe that to protect the Ombudsman's process, it is very important that the committee not now consider some information which has not been presented to us in the course of our investigation.

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I would just note for formality the conclusions and recommendations that are the subject of the report. Those appear at page 38. They appear three times, but page 38 is one of the times they appear. At the bottom of page 38 you will see Dr. Hill's views on the matter. His conclusions, in accordance with section 22 of the Ombudsman Act, are:

"1. The ministry's restriction of eligibility for a companion travel grant under the northern health travel grant program, to those travelling with patients under the age of 18, is in accordance with legislation which is unreasonable and improperly discriminatory.

"2. The ministry's actions appear to have been contrary to law in that they appear to violate section 15 of the Charter of Rights and Freedoms."

The recommendation which flows from those conclusions is that the ministry should amend Ontario regulation 596/85, the regulation which contains this restriction, in order to remove all age restrictions pertaining to the provision of companion travel grants under the northern health travel grant program.

I think the issue is a fairly simple one. I am prepared to answer any questions the committee might have about our investigation. I believe that any questions you might have with respect to the ministry's position should perhaps be saved for the ministry official.

Mr. Bell: Just for clarity—I am looking at the page 35 report; it does not matter what page you are looking at—what in the legislation is improperly discriminatory, specifically?

Ms. Morrison: The restriction of the legislation to those under 18 is considered by the Ombudsman to be, within the meaning of the words "improperly discriminatory" in the Ombudsman Act, a discriminatory provision.

Mr. Bell: But is it not a program developed pursuant to a regulation pursuant to the legislation?

Ms. Morrison: Yes.

Mr. Bell: Is there anything in the legislation that is improperly discriminatory, or are you referring to the—

Ms. Morrison: I am referring to the regulation.

Mr. Bell: You are referring to the implementation of the regulation, which is the grant program.

Ms. Morrison: Section 5 of the regulation, which is set out on page 34, says,

"Where a patient under 18 years of age is accompanied by an adult who is a relative or guardian of the patient and the patient is given a grant under section 3 or 6 and the transportation of the patient is by air, rail or bus, a grant may be provided to the adult who accompanies a patient in the same amount as is provided to the patient."

That section 5 of regulation 596 is the legislation that is being referred to in the first conclusion of the Ombudsman.

Mr. Bell: OK, I wanted to be precise on that. Will you note in that section that the giving of the grant is discretionary?

Ms. Morrison: Yes.

Mr. Bell: To your knowledge, is it an automatic situation where a grant is applied for by someone under the age of 18 that it is granted?

Ms. Morrison: I think you would have to ask the ministry that.

Mr. Bell: All right, we can save that, then.

I think you have already answered this, but in the next conclusion you are saying again, I take it, that section 5 of the regulation appears to violate section 15 of the Charter of Rights.

Ms. Morrison: That is correct.

Mr. Bell: Just for the benefit of members of the committee, what does section 15 say?

Ms. Morrison: Section 15 of the Charter of Rights is the equality section, which provides that there cannot be discrimination on the basis of named grounds in particular and other unnamed grounds in general. We are contending that this particular regulation, providing as it does a restriction on the basis of age, is contrary to section 15 of the Charter of Rights and Freedoms.

Mr. Bell: Is age a named provision in section 15?

Ms. Morrison: Yes.

Mr. Bell: For the record, is it your office's opinion that the section does violate the charter or appears to violate the charter? To me, there is a difference.

Ms. Morrison: Our technical conclusion was that it appears to be contrary to law in that it appears to violate the charter. I think it is our view that the charter is used by the Ombudsman as a basis for judging the propriety of legislation, although the Ombudsman himself is not within the meaning of the term "a court of competent jurisdiction," to conclude that the matter is actually a charter violation.

Mr. Bell: But you formulate legal conclusions all the time. We are going to see one when we get to the Ministry of Education case.

Ms. Morrison: Yes, we do, and that is a situation of a similar nature.

Mr. Bell: But saying, "It appears to have been contrary to the charter" is something less than saying, "It is contrary to the charter, in my opinion."

Ms. Morrison: No, I do not think that is true. In the wording of the Ombudsman Act and in the manner in which the Ombudsman makes his conclusions and recommendations, "appears to have been contrary to law in that it appears to violate the charter" expresses the Ombudsman's view that the section does, in fact, violate the charter.

Mr. Bell: OK. On the recommendation, do you have any suggestions to the ministry about how the regulation should be amended?

Ms. Morrison: We believe it could be amended in such a way that, on a physician's authority, accompaniment might be granted. It seems in cases such as Mr. K's, for example, that his physician recommended he have someone accompany him. Although the ministry has suggested that this would be very onerous for physicians, I believe they make decisions of this sort regularly, and it appears they may be the best people to tell whether someone really requires accompaniment on a journey of this kind.

Mr. Bell: What is going to happen to the three people in question in terms of entitlement? How do they get entitlement?

Ms. Morrison: We have not recommended retroactive entitlement for these three complainants; we have recommended that the regulation be changed. It would be open to this committee, as it has sometimes in the past, to recommend something different from what we have recommended and to recommend that some sort of retroactive provision be made for these three complainants. The Ombudsman's recommendation in each of the cases was a recommendation in general, not in specific.

Mr. Bell: So the committee can fully understand that, in the hypothetical, if the Ministry of Health had come forward to say, "We will amend the regulation to remove all age restrictions pertaining to the provision of companion travel grants"—are you with me?

Ms. Morrison: Sorry.

Mr. Bell: If the ministry had come to you and said, "We will amend the regulation in order to remove all age restrictions pertaining to the provision of companion travel grants," I take it Dr. Hill would have said: "That fully satisfies my recommendation. The book is closed."

Ms. Morrison: That is right.

Mr. Bell: Can you explain to us why you did not make a specific recommendation about the three individuals?

Ms. Morrison: In this particular case, I think our view was that this as an ongoing program— Perhaps these complainants and certainly other complainants would benefit from a change in the regulation to make it more fair, but we did not wish to recommend going back on these specific complainants as those people who had complained to us.

Mr. Bell: I take it by that that, to the extent that trips to the south for medical reasons will be required in the future, these people will benefit. What has gone on in the past we will leave.

Ms. Morrison: That is right.

Mr. Bell: As far as any committee decision is concerned that would fulfil the Ombudsman's expectations, the reimbursement to these people is not part of that?

Ms. Morrison: That is right.

Mr. Bell: I do not have any further questions.

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Mr. Campbell: I just ask that perhaps we could remove the north-south bias, because there are facilities in northern Ontario which are excellent and these patients are referred. So it is not necessarily southern Ontario; it is sometimes northerners going to other parts of northern Ontario that this grant applies to.

I have two questions. In the investigation, it appears to me that two cases, the Ks and the Ls, were on some form of social assistance, although it is not clear who, in fact, paid the trip, whether the social services department in Thunder Bay, in the one case, actually paid the amounts. I wonder if that could be clarified under the investigation.

Ms. Morrison: I do not think it was relevant to our inquiry in terms of the northern health travel grant. I do not have any information as to who would have paid. As far as my investigator advises me, they were not on assistance.

Mr. Campbell: They were not on assistance, although it does say that one was a recipient of social assistance. I will let that pass. It was just relevant to retroactivity. Maybe the municipality is reimbursed.

In the case of Ms. M, I believe both parents were in accompaniment. I believe your information says that both parents were in accompaniment until the age of 18. My understanding of the way the system works is that one attendant care giver is to accompany someone under 18, not both. I am wondering if your investigator could clarify that for the committee.

Ms. Morrison: We would be asking, in her case, for the regulation to provide payment for an accompaniment for her, even though she was not 18. The point of the investigation was not that she wanted both parents to go but only that she wanted an accompaniment grant.

Mr. Campbell: Thank you for clarifying that for me.

Mr. McLean: Your documentation here is based mainly on the Charter of Rights. That is the reason you feel these people should be compensated, because section 15 indicates that they have been discriminated against.

Ms. Morrison: That is one of the reasons. The other reason, which is the first conclusion, is that the regulation is in accordance with legislation which is unreasonable and improperly discriminatory within the meaning of the Ombudsman Act. That conclusion stands alone, aside from any charter argument.

Mr. McLean: No, I do not think so, not in my opinion. I would think it is the charter you are mainly dealing with.

Ms. Morrison: If such a case had come up prior to the charter, it would still have been open to the Ombudsman to find that legislation which provided a particular kind of benefit differentially to people who needed the benefit was improperly discriminatory within the meaning of the act, even though there would not be a charter which said it was on the basis of age or some other basis.

I think the very essence of the case is that you have people who need to travel to get medical treatment, and this regulation provides for only some of those people who need to travel to have someone accompany them to help them. Although we have found that it appears to contravene the charter, I think the very first conclusion the Ombudsman made was just that it is an unfair distinction.

Mr. McLean: Being that the policy is unfair, would it not be clearly understood that she should make a recommendation that the policy be redrafted? I see there has been a recommendation that the Ministry of the Attorney General look into the possibility of maybe redefining it.

Ms. Morrison: We have recommended that the regulation be changed, and if the regulation were changed to take out the restriction that restricts it to people under 18, then it would be available to other people who needed it and therefore would no longer be unfair.

Mr. McLean: As long as that policy is in effect, do you not think the ministry and the government would have to abide by that policy until it was changed?

Ms. Morrison: They would. That is why we have recommended that it be changed.

Mr. McLean: But you also recommended compensation because of the charter.

Ms. Morrison: No, we have not recommended compensation for these individual complainants. We have just recommended that the regulation be changed so that, in the future, people in this situation would receive grants.

Ms. Bryden: Your recommendation does not include any criteria beyond

age, presumably, if the regulation was amended to eliminate the 18. I wanted to confirm that.

Also, I notice Mr. Barkin, in his letter of May 20—page 26, I think—says that the question of consent to further medical treatment was one of the reasons for providing special service, at least for those under 18, since they are not able to give consent on their own and probably need somebody with them to help. Do you think the consent was the main reason for their choosing to discriminate, or was it that they wanted to avoid having to pick and choose between people or set criteria for people who would be eligible if they removed the age limit?

Ms. Morrison: I think both of those were considerations. One of the problems with the consent argument is that there are a lot of other people who cannot give consent besides children. Presumably, sometimes people are not able to give consent and need someone to accompany them.

I think the ministry's main position—and you will have to talk to ministry representatives about this—is the concern about discretion, about it being wide open and having to make choices. At page 34, you will see that the Ombudsman recognized those concerns of the ministry and suggested that there might be some ways of confining this discretion by perhaps having a list of specific disabilities—legal blindness, for example—which would qualify for the grant and therefore allow extension of the grant beyond just the age qualification to some other kinds of disabilities, while at the same time allowing for discretion at the edges of that for other needful cases.

Ms. Bryden: Did you ever get a copy of that internal report the ministry refers to preceding the legislation?

Ms. Morrison: Yes. We did have copies of some internal documents, which are referenced in our report. Especially in our section 19(3) letter, we referred to those sources and to the information we obtained from those reports. They did not fully provide us with information which satisfied the Ombudsman about the reasons for the discrimination or the restriction to age 18.

Ms. Bryden: They did presumably indicate that they were looking for some sort of criteria, perhaps so it would not just be blanket approval. I am not sure whether, when you decide to pay grants for people from distances, that there should not be blanket approval rather than trying to narrow the application by some sort of criteria. But did that internal document go into the question of criteria, like a means test or, as you say, certain illnesses or certain relationships between the people travelling?

Ms. Morrison: It did note that there would be other people who might require accompaniment, but the report stated that the only relatively clearly definable category, the one that was the easiest to define, was the under 18, and therefore they set out that particular criterion.

They did also note in that report that there might be the possibility of hospitals being in a position to determine whether a patient ought to be accompanied. In its initial documentation, in those internal reports we received, there was some mention of a possibility of additional funds to be allocated in the future to expand the program to provide accompaniment for other than the restrictive category, which was the initial provision of the program.

Ms. Bryden: As you can see, they rejected the hospital connection, which is a good thing, because not all of these trips are initiated through hospitals. I guess the problem they were facing was trying to restrict the application, perhaps on a monetary criterion, and this is, I think, what we are looking at, whether you can restrict the application without violating the charter.

Madam Chairman: Before Mr. Mackenzie goes up, Mr. Campbell had brought up his interpretation that Mr. and Mrs. L were on some kind of assistance. I too had felt, from the reading of the material, that had come across. I just direct you to page 3, where it says the two of them were on an old age security pension; then later on, on page 11 and somewhere else, which I have just lost for a minute—in paragraph 2 indented—that they lived within limited means.

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On page 12—and this is the letter that has been written from your office to Dr. Barkin—in the last indented paragraph, in the indentation, it says, "Mr. L contends that it is unfair for individuals in limited financial circumstances to have to rely on general welfare assistance to cover travel costs."

In fact, there have been so many references to it, directly or indirectly, that I think I too concluded they were on some kind of assistance. I just say that because Mr. Campbell brought it up.

Mr. Campbell: I am new to the committee and obviously I did not know the procedure as well as I probably should have. What I was going to bring up was that people on other fixed-income pensions do routinely apply to municipal welfare departments for assistance of this type. I guess it was relevant to me for some other questioning I might have for the Ministry of Health and that is why I brought it up, whether or not it was relevant to the investigation.

Madam Chairman: There was another reference in the letters from the Ministry of Health in the material as to other programs that are available through municipalities, so I do not know that it is important. But indeed the answer that was given, although not incorrect, did not, I think, encompass the material. I am just concerned that Mr. Campbell's further questioning in this area may be a bit jeopardized by that initial reply.

Ms. Morrison: To clarify, the OAS is a low income. Certainly, these people were low-income people. They were not on welfare or social assistance, as I know. The contentions that are set out in Mr. L's letter, again, are his contentions. That initial notice sets out his contentions about the program. I can see, when you point it out, that the reference to general welfare assistance in his contentions certainly would lead one to believe he was talking about that program.

Mr. Campbell: I am sorry to belabour the point, but for clarification, routinely with the municipal welfare system, for people on fixed-income pensions, it is a fine line whether they are on a pension or social assistance. When I asked about social assistance, I meant the all-encompassing term "social assistance," including pensions. In any event, people routinely apply to welfare departments under general assistance, supplementary assistance as well, for these types of costs incurred. I just wanted to clarify that for further questioning of the Ministry of Health.

Madam Chairman: I am sorry, Mr. Mackenzie. I interjected there, but I felt it was misleading.

Mr. Campbell: I apologize to my colleague.

Mr. Mackenzie: I am not sure the problem is whether or not there are other avenues that people can take. We are talking about the northern Ontario travel fund in medical cases. At least in one case, the doctor recommended that somebody travel with him. Do you think the reason would be that a person who is seriously ill or blind might very well be at some risk or be better able to handle the trip with a travel companion? Is that a fairly obvious analogy?

Ms. Morrison: I think the doctor is in a position to know the extent to which the person might require assistance. In some of these cases, the person may not require assistance on the way to surgery or whatever it is but may require assistance afterwards. Certainly, in the case of Ms. M, her surgeries caused a fairly serious disability.

Mr. Mackenzie: In that case or in a case of blindness, I can see where the setting and whether or not the person is going to benefit from the trip to the extent that is expected could very well depend on the kind of assistance he has, especially if it is a new or different environment.

The other thing is the argument basically against the grant seems to be the fact they have set a rule of 18. It seems to me that when you are dealing with people's needs, the art of the possible is more important than a hard bureaucratic rule. What would happen to a person who was 20, 21 or 22, but who had the mental age of, say, four, five or six? Would the 18 rule still apply? It would seem so, based on the letters we have had from the Ministry of Health; a person who had some mental handicaps and might very well not have an age of any more than a five- or six-year-old would still be denied the travel companion.

Ms. Morrison: My understanding is that is the ministry's decision.

Mr. Mackenzie: It seems to me there are some clear questions that have to be asked. It is not our job to set up criteria, I do not think, but it seems to me there can be a better way of deciding these things than an arbitrary age.

Madam Chairman: Mr. Tatham.

Mr. Tatham: Ms. Bryden asked the question I was going to ask.

Madam Chairman: I have a couple of questions. I was a bit surprised that your stated facts on the policy of the goals of the program mentioned only that it was an attempt to offset the costs of the medical travels south for those residing in northern Ontario. That is what you have on page 2, your facts statement, "The stated goals of the program, which appear to be an attempt to offset the costs of medically necessary travel to specialists for those residing in northern Ontario...."

I just wonder why in none of your fact situations you did make reference to the idea of consent. I gather later on, from the Ministry of Health, that it does make it a two-pronged program. As Ms. Bryden has pointed out, the second is the inability for all people under 18 to be able to consent to some kind of operative procedure or perhaps even some kind of drug program.

Ms. Morrison: As I understand it from the information we were provided by the ministry, the goal of the program really is to offset expenses; it is not necessarily the goal of the program to put people in a situation where they can provide consent to medical interventions. The ministry explains the fact that it is confined to people under 18 by saying, "That's one place in which we really feel accompaniment would be necessary, because of the consent problem."

The total program, as I understand it, is designed to offset the costs of travelling to obtain medical treatment. This is only one small part of the program. The program provides costs for people who have to travel themselves to get medical assistance. The part of the program that we are criticizing is only the part which provides for accompaniment. The statement of the goals is really the whole program, not just the accompaniment part of it. Does that clarify it?

Madam Chairman: Yes.

The other thing is that looking at Ms. M, from reading that, I figured out she would have been about 22 at the time. I think that is within a year of accuracy.

Ms. Morrison: I think that is correct.

Madam Chairman: I got the feeling from your facts that the basis of her argument that she should have companions with her, her parents, was that because she had had them since she was 14 that somehow entitled her to having them for ever to accompany her. I did not get the feeling that it was so much that she was unable to travel on her own, but rather she had had both her parents travel with her since she was 14 and, even though she was 22 now, she felt she should still have them.

I do not know what led me to that, but it said, in the third last line, "Ms. M's parents, who have accompanied her on each occasion have been denied," because she was over 18. I got the feeling that it was not her inability to on her own, but rather she had grown accustomed to her parents coming with her since she was 14, and somehow that entitled her to always having her parents with her.

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Ms. Morrison: That might have been her view of her complaint. Our recommendation is that the program be extended to people who need to have someone accompany them, not just to people who wish to have their parents accompany them. So if indeed her complaint is based on the fact that she would just like to have her mom and dad with her whenever she travels for medical reasons, she might not comply with whatever expanded regulation we would be content with. We are not recommending that people be able to have accompaniment just because they want it.

Madam Chairman: Maybe you will have to look to your investigator on this case, but did you get the feeling that Ms. M indeed did need some companion because of her medical condition, that it was more than just the mere fact that she was used to her parents coming?

Ms. Morrison: Yes. This hip replacement operation, I think, leaves Ms. M very unable to cope with travelling long distances. That is my understanding.

Madam Chairman: The other thing is I recognize that the Ministry of Health did not respond to one of the concerns of the Ombudsman in his subsection 19(3) letter with regard to the Attorney General's looking into section 15 of the Charter of Rights question, but in response to the subsection 22(3) letter, there was mention that there would be a legal opinion obtained from the AG's office. Given that your subsection 22(3) letter was June 30, 1988, and the response was July 25 and was received July 28, I believe, and now we are here in committee on August 9, would you agree that it has come quite quickly to committee in comparison to other years, from your subsection 22(3) letter to the actual date it appears before the committee?

Ms. Morrison: Yes, it has. I think the reason we went forward with this to the committee is that so little had changed from the date of our 19(3) letter, which was in March, to the date of our 22(3) report. We had received no more information, nor did it seem likely we were going to receive any more information. Because the committee was meeting, we felt it was an opportunity to bring this matter forward.

Madam Chairman: Did the Ministry of Health, in between the subsection 19(3) letter and the subsection 22(3) letter at any time mention that it was seeking a legal opinion on your contention that section 15 of the Charter of Rights on age discrimination had been breached in its regulation or legislation?

Ms. Morrison: No.

Madam Chairman: The first you heard that the Attorney General was going to be asked to delve into this matter was in the July 27 letter when the ministry responded to the subsection 22(3) letter.

Ms. Morrison: That is right.

Madam Chairman: I think that is all I had. Any further questions from the committee?

Ms. Bryden: In response to the replies that we have just obtained, I presume from what you say that you are not suggesting that anybody should be able to travel with somebody who has medical reasons to travel, but it has to be determined on some sort of need of the patient, not necessarily financial need. Really, you are putting somebody as the keeper of the gate who will determine her medical need or her need for assistance with a member of the family or some other person. Can that be written into regulation 586 without introducing a new form of discrimination, having the doctor or the hospital or the ministry able to determine whether she really needs a companion?

Ms. Morrison: I think it can. Our suggestion is that there are some specific kinds of disabilities which could be written into the regulation in any case. People who are legally blind might always be able to obtain this kind of assistance, just as children under 18 can.

As for the situations in which it needs to be determined whether they need to have someone accompany them or not, I think medical people make those kinds of determinations all the time. They are not discriminatory determinations; they are determinations on the basis of medical opinion. I feel there is room here for that kind of authorization.

Ms. Bryden: Thank you.

Madam Chairman: Any further questions?

Mr. Mackenzie: It strikes me that probably the first resource is going to be the recommendation of the medical authorities involved or the doctor, but should there not be also some other avenue of appeal? I suppose it would be a doctor handling it, but I can see some psychological problems as well in terms of a serious health situation that requires somebody to head down south. I am not sure that I want the criteria decided entirely by the doctor, or at least I would like some avenue of appeal if we were setting up some kind of—

Ms. Morrison: It might be possible that a person could get, say, a second medical opinion or the opinion of a specialist on the matter.

Madam Chairman: Mr. LeNeveu, are you going to make an opening statement before you commence, or is anybody?

Mr. LeNeveu: No. I think the ministry would just be pleased to answer questions from the committee.

Mr. McLean: On page 51, it says, "Counsel for this ministry will be seeking a legal opinion from the Ministry of the Attorney General." At what stage is that? What type of legal opinion are you really looking for?

Mr. LeNeveu: May I introduce Gilbert Sharpe to members of the committee? He is the director of legal services and he will apprise the committee of where the matter stands with the Attorney General at the moment.

Mr. Sharpe: Would it be possible, perhaps, for me to make a few comments on some of the legal matters that have been raised here?

Madam Chairman: That is why I was asking initially—and maybe I did not make myself clear—if you had any opening remarks to make. That was what I was trying to direct. With the consent of the committee, I certainly would be prepared to let you do that now. Although not required, it is an opportunity for you to make some opening submission that allows you to defend your position just a little bit. Unless anybody objects to that, and if Mr. McLean will hold his questions for a moment, I am prepared to let you.

Mr. Sharpe: Perhaps I can roll the answer into some more general comments. It seems to me that, as a society, we have always accorded some special concerns in legislative form and in programs to children. An example would be various statutes involving child protection proceedings, child abuse reporting and matters of that sort. There are certainly many instances—in fact some jurisdictions have looked at this—where adults are being abused and perhaps there should be some legislation that protects them as well. They may be mentally incapable of defending themselves and so on but, thus far, most societies have focused primarily on children as a class.

In this context, I question both conclusions of the Ombudsman; both the matter of whether the regulation is improperly discriminatory—and I focus on the word "improperly" and will get back to that—and also whether indeed there has been some offence of section 15 of the Charter of Rights and Freedoms. I will perhaps comment briefly about that as well. The matter of setting up a payment base for young people who need to travel, and the question of assuming that because they are children their immediate family should be with them, I

think is very important to recognize. Again, we are dealing with children as a class. Also, it was mentioned there is the legal requirement that children who are travelling some distance for the purpose of treatment will require a medical consent. They will not be allowed, in most instances, to consent on their own, so that it will be essential there be an immediate family member or guardian present in order to sign the requisite consent.

In this day of heightened awareness and concern by the medical profession and hospitals of malpractice, they are being very cautious about taking any kind of telephone consent. In fact, the public hospital regulations require a written consent for surgery, for example. So there is a very practical reason why, as a class, it is important to have a family member present when children are travelling for medical aid.

Madam Chairman: Ms. Morrison, do you have a point of order?

Ms. Morrison: Yes, I do. I think a lot of the information that you are going to hear about consent and the charter is information that should have been provided as part of the ministry's response to our 19(3) and our 22(3) letters.

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Mr. Bell: Is it all new?

Ms. Morrison: I have not heard these particular arguments before, and anything we have had in response to our 19(3) and 22(3) letters is exactly what is in these letters. We have had no other discussion, so if it is not in those letters, it is new information within the meaning of your ruling.

Madam Chairman: Just with regard to consent, although I must admit Mr. Sharpe is elaborating on it a little bit more, on page 26 Dr. Barkin, the Deputy Minister of Health, did respond. In the opening paragraph, last line, he did bring up the fact that the grant for under 18 years of age is "to recognize both special transportation circumstances and the matter of consent for treatment." It is being elaborated on somewhat more now.

Ms. Morrison: My point is just that to the extent that there is more to be said than that consent is possible if children have parents travelling with them, to the extent that there is going to be information about the inability of people to consent under other circumstances or an elaboration on this document, I would like the committee to know these particular arguments have not been made in this way to us before.

Madam Chairman: Do you have any comments on Ms. Morrison's concerns?

Mr. Sharpe: The only comment I would make is that I think much of the response from the ministry has been an explanation about the practical reasons why the program was set up the way it was. I would suggest that legal comment, comment on the existing state of the law, does not necessarily have to be set out as such, that the Ombudsman's office certainly has lawyers available in-house and Mr. Bell as counsel.

The law is fairly clear, and all I am doing is amplifying a bit on the existing legal status of children, the practical concerns surrounding the matter of consent and substitute consent, which were not elaborated upon in Dr. Barkin's letter. I thought that for the benefit of the members of the committee it might be of assistance. I am prepared to move on now to the

specific points that the Ombudsman has raised and not go on any further on that.

Madam Chairman: If I can, since you have been willing to press on, our concern here, one that you are not privy to, is that we have had circumstances where people have come in to the disadvantage of the Ombudsman's office. They have had an opportunity of two, three, four years to make any cases they want to the Ombudsman directly, and we have had very little, if any, response whatsoever to our material; in fact, in some instances no response at all.

Our committee has been very firmly saying that new information being brought to the committee at this time is unfair and prejudicial to the Ombudsman's office. If we seem overly cautious on something, a very minor point perhaps in your view, it is because we did encounter some serious concerns during our February sittings, and I think the committee as a whole has elaborated our concern for new information being brought in.

Ms. Morrison, as long as Mr. Sharpe is willing to press on, you could keep drawing it to our attention.

Mr. Sharpe: I just very briefly wanted to comment on the conclusions dealing with "improperly discriminatory" and the Charter of Rights concern, which is a very important one. I think it is important to recognize that while again we might agree that it would be helpful to have patients in very serious medical circumstances have someone accompany them, there is not in law an entitlement as yet. We have attempted to establish some payment program for children as a class, because, as I have indicated, I think we as a society do view children differently.

I might comment, as an aside, on the notion of setting up special illnesses or classes—legal blindness, for example. The lawyer at the Ministry of the Attorney General with whom I have had discussions, one of their charter experts, is legally blind. I suspect if he were here, he might be somewhat concerned with the notion that this, by itself, should be a criterion to have someone accompany him, because I know last year he went to a conference by himself in Yellowknife, an international conference on charter matters.

Again, it might be difficult to decide on the type of classes of illnesses or conditions and whether indeed there might be some discrimination in trying to establish those.

However, setting that aside as a point, on the notion of improper discrimination and charter inequality concerns because of age, and again the assumption that there is not an entitlement, if we were to look at section 15 of the charter, the concern is raised in subsection 15(1), and subsection 15(2) has certain exclusions and talks about how the general rule of equality rights does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged groups, including those who are disadvantaged because of age or disability.

I had a preliminary view from one person with whom I spoke in the Attorney General's office but we have not had sufficient time to anticipate a formal written opinion from them. On the question of when that might be received, the Assistant Deputy Attorney General, Larry Taman, who is in charge of charter matters, is on vacation presently. While his staff is preparing a preliminary view, it was my intention to meet with him on this when he returns.

I would anticipate some kind of formal response by early September. However, the preliminary view of Mr. Lepofsky, and it is one I happen to share, is that subsection 15(2) does recognize within the charter itself the ability of the government to establish a special kind of entitlement and payment for this class of person based on age and that does not establish a basis to suggest that the 15(1) provision of inequality has been offended.

On the question of improper discrimination, although it is not directly an issue here, section 13 of the Ontario Human Rights Code also recognizes, again as an exception to the general rule, discriminatory practice; certain exceptions for these special programs that are set up to help classes of individuals based on age and so on.

Those are just the opening comments I would like to make. I know that Mr. LeNevue and others here from the ministry will be able to speak on matters relating to the program itself.

Madam Chairman: Again I have to caution you, because in your letters and the documents we have before us, the response to the section 22(3) letter from the Ministry of Health is the first time that you responded at all to the Ombudsman's concern about the section 15 charter rights. Any additional information you might attain while the committee in making its decision might have to seek its own legal advice, even if it is the Attorney General's, on the particular section 15 legal opinion, you must be cautious. If you have not prepared a document which the Ombudsman has seen, it is very difficult to compare, to refer to hearsay, if I may so refer, so please be cautious in your deliberations.

Mr. McLean: At this time, I think I will give Mr. Bell the opportunity if he wants to ask some questions.

Mr. Bell: Either gentleman, as of now there has been no opinion formulated respecting the Ombudsman's conclusions, twofold, that within the context of his legislation—in 22(1)(b), I think—the section 5 we have been referring to is improperly discriminatory. That is within his parameters of discretion. Secondly, section 15 of the charter, that it is discriminatory. No opinion has been formulated within the ministry or received from the Attorney General's office. Is that correct?

Mr. Sharpe: No formal opinion has been received from the Attorney General's office, but I have developed my own legal opinion, as I have stated here, as to the two statements and conclusions by the Ombudsman.

Mr. Bell: Had you developed that opinion as of the date Dr. Barkin wrote the letter of July 25, 1988?

Mr. Sharpe: I was in the process of developing it at that time and we had had some informal discussions. The question of timing was raised. I believe that if this committee had entertained this matter, say, a month hence, there would have been another letter forthcoming from Dr. Barkin setting out my view and hopefully the Attorney General's as well.

Mr. Bell: It sounds like that opinion would be: "We do not agree with you, Ombudsman. It is not discriminatory."

Mr. Sharpe: That is correct.

Mr. Bell: This may go beyond the bounds of the committee's ruling in these areas but I am going to attempt it anyway. I always find it easier to give real examples to these arguments rather than talking in the hypothetical. Can we think of an example of a 17-year-old in northern Ontario, who for a number of years has required attendances at the Hospital for Sick Children in Toronto for a number of orthopaedic procedures and that child, as well as having severe physical restrictions, has mental restrictions as well; the chronological age being whatever—five or six? Based on the opinion that you formulated, can you explain the justification that at the child's 18th birthday the plan does not pay for the travel of the accompanying parent?

Mr. Sharpe: I cannot.

Mr. Bell: You are of the opinion it is not discriminatory. Why is that not discriminatory?

Mr. Sharpe: The age of majority, the notion of 18 being generally recognized as the age at which young people are able to assume certain legal rights, was in my view used as an appropriate demarcation when the ministry was examining the question of at what point children should be allowed to have this type of entitlement. It is discriminatory, of course; you have discriminated in the sense of establishing an age barrier. The focus is on the words "improperly discriminatory."

It may well be that in examining the matter some could argue that 16 is a more appropriate age, but when one looks at child welfare laws, for example, it is my understanding that the jurisdiction of children's aid societies is up to the age of 18; if a young person requires care and a parent cannot be found, one can apply to court to have a children's aid society brought in, or perhaps the official guardian's office, and that the age division there is 18.

Mr. Bell: Refocus on my hypothetical, wherein in my hypothetical the age of discretion, which is also a common law principle, is irrelevant for the duration of that person's life. How are the provision of section 5 and the program implemented thereunder not improperly discriminatory? How do you justify cutting that person off, or cutting the parent off, the guardian, if you will, because of age 18?

Mr. Sharpe: I would again answer it with the notion that in law, 18 is used for a number of purposes. Again, to get back to the example of a children's aid society, how do we as a society justify saying that a 17-year-old who is being abused has a law protecting that and requiring reporting but at 18 the same person in the same circumstances does not have the same protection? I cannot defend society's decision to make a number of choices using 18 as a point of demarcation, except that was seen as the accepted point of demarcation by society generally when the ministry was trying to identify children as a class—again, my opening statement, special protections for children, which was the aim. Ron, do you want to expand on that at all?

Mr. LeNeveu: I do not think you can go beyond that. Obviously, when you cross the line in your particular example, you will have a circumstance where the individual continues to qualify for the travel at both age 17 and 18. The accompaniment issue becomes a point at which your contention would be that the discrimination was applied, but that would be true of any person—be it that individual or any other person—who is over the age of 18.

Mr. Bell: As I read both Dr. Dyer and Dr. Barkin's letter, age of

consent is not the only factor that went into the decision to formulate section 5 in the plan? Am I correct?

Mr. LeNeveu: That is correct.

Mr. Bell: One of the other factors was the recognized need for some form of supervision of the individual who is going for medical treatment. Is that correct?

Mr. LeNeveu: That is right. If you take a very young child, four or five years of age, obviously the parent or the guardian will want to accompany the child. There may be a requirement also from the airlines, if the decision was to go by airline, where the airlines themselves would like to see a child accompanied. So there are those types of considerations.

Mr. Bell: Also the requirement by the hospital.

Mr. LeNeveu: The requirement for medical consent.

Mr. Bell: That somebody should be there, as and whenever possible.

Mr. LeNeveu: That is correct.

Mr. Bell: Are there any other factors you are aware of that were considered in the formulation of the current section 5 and the grant program that we have been talking about?

Mr. LeNeveu: We have already touched in the committee today on the issue of medical condition and the suggestion of the Ombudsman that medical conditions perhaps could be defined. Dr. Proud could expand on that point. When it was looked at, there were a lot of difficulties seen in trying to ascertain and predetermine that certain medical conditions would or would not prequalify an individual for entitlements.

Blindness was mentioned today, but there are many legally blind people who travel individually. A person could have a very severe form of cancer, a fatal form of cancer, but be totally capable of travelling and not require accompaniment. Same with a heart condition. When you go through the various disease categories, it is very difficult to say whether that disease does or does not incapacitate the individual.

Mr. Bell: But as I read this material, the physical condition was not one of the factors that was considered in formulating it. It may be one you have looked at subsequently in the—

Mr. LeNeveu: No. In the internal discussions within the ministry at the time of the formulation of the policy, that issue was addressed.

Mr. Bell: With respect to the need for accompaniment and the need for consent, does one have greater weight than the other?

Mr. LeNeveu: I do not think I can answer that question on behalf of the government. Those were considerations.

Mr. Bell: Let me ask you personally, though, and in a practical sense. Would you agree that the need for accompaniment would be a greater consideration than the need for consent, inasmuch as consent can be obtained in many ways, in advance or by other means?

Mr. LeNeveu: I am not sure I can express a personal view because I think it would vary, depending on many circumstances. But I think in every case those two considerations would have to be thought about.

Mr. Bell: For example, where the procedure in question is known in advance, it is common practice for hospitals, for example, to obtain consents weeks in advance.

Mr. LeNeveu: I can give you examples that would go both ways. That is why I cannot answer your question. I can think of an example where the child was three years old, the consents had all been given and the child was returning for a second medical examination. It is going to be purely an examination. Obviously, accompaniment would be the critical question, because there is no medical procedure that is going to transpire. The child is merely coming back to Toronto to see a specialist after a surgical procedure, to see whether the total procedure was a success.

I cannot answer the question. I am sorry, Mr. Bell.

Mr. Bell: Does the ministry currently have plans to revise the grant plan?

Mr. LeNeveu: At the present time, the ministry has been conducting a continuing assessment of the program. Since it was initially introduced, a number of minor changes have been added to the program. For instance, in response to Mr. Campbell's remarks, the program is not exclusively northern transportation in the sense of north-south.

In fact, in designing the program, there was a very strong desire to encourage persons to go to the closest centre for appropriate care, and there was a desire to see that the program was designed to encourage persons to go to, say, Sudbury or Thunder Bay. In fact, there was a significant expression of concern during the preliminary discussions of the program from the specialists in those two centres that the introduction of a government program of this type might encourage people to bypass the growing expertise that was in the major centres of northern Ontario.

In that regard, the criteria of the program have been changed. In terms of kilometres, 300 miles to southern Ontario one way is the criterion to qualify for the grant. However, in northern Ontario, recognizing the difficulty of travel within the north, the criterion for a grant is 250 kilometres one way.

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In the program at the present time, the majority of people would come to southern Ontario, and primarily to Toronto. The focus seems to be primarily on the Toronto General Hospital, the Hospital for Sick Children and Princess Margaret Hospital, but a growing number of persons are going both to Sudbury and to Thunder Bay.

Of course, in northwestern Ontario, because the distance from Thunder Bay to Kenora is quite vast, there is a preponderance of use of Winnipeg by the persons in northwestern Ontario, from Dryden, Kenora and I guess from Rainy River to a limited degree. They are going to Winnipeg, as the closest place to receive high-quality care. Certainly, it is much closer for the person to travel to Winnipeg than to Toronto.

Mr. Bell: I should explain to Mr. Campbell. My bias is southern Ontario, and it is related to the Hospital for Sick Children. I will explain the reason why later. But I was thinking of the 18-year-old or the person who started at age 14, knowing that person had come south. There was no intent to impugn the excellent quality of medical facilities available in the north.

Mr. LeNeveu, let me be more specific, if I may. I think you have a copy of the committee's brief of material. The 19(3) letter that was sent by Dr. Hill to Dr. Barkin is found at page 21, if you can find that. I am going to ask the question that the Ombudsman asked but apparently never got an answer to.

On page 22, in the bottom paragraph, there is reference to a report or a document that the Ombudsman's office obtained called "Northern Transportation Subsidy Program and Access to Health Services." Are you familiar with that document?

Mr. LeNeveu: I am familiar. I do not have it with me today but I think I can perhaps answer your question with regard to that document.

Mr. Bell: He goes on on page 23 to highlight the contents of the document. In the first full paragraph, there is some discussion of an expansion, if you will, of the grant entitlement to persons under 18. He then makes the statement in that paragraph: "Efforts by my investigative staff to determine whether this proposal had ever been considered by the ministry have been unsuccessful. Perhaps you can advise me." Can you advise us now what happened?

Mr. LeNeveu: Perhaps I could deal with that paragraph and the paragraph below. As the program was developed—this is background for the committee which I am certain the committee members will recall—there was a resolution in the House, unanimously adopted by the House, suggesting that there be a northern travel grant program for health purposes, for essential, medically necessary health travel. The criterion approved by the House or recommended by the House was 200 miles in northern Ontario.

That resolution was looked at by the Ministry of Health and a policy was initially announced by the former government of an intention to introduce a program that would provide travel grant assistance over 200 miles for medically necessary trips to hospitals. The ministry at that time did hold some discussions with a number of hospitals in Ontario, primarily focusing on the teaching hospitals, as to how the program might be designed and perhaps be administered by the hospitals themselves, in that the grant would be limited to trips from a place in northern Ontario to a hospital most probably in southern Ontario.

The question of some discretionary funding was then entertained. A lot of problems were seen in that—and they have been touched on in the committee today—dealing with the difficulties of medical condition and so forth. However, the program that was implemented by the new government extended the boundaries of the program to include medically necessary trips not only to hospitals but also to specialists.

There is a recognition in northern Ontario that specialist services are perhaps more limited. Certainly, they are more limited in a geographic sense, in that the specialists in northern Ontario are focused primarily in Sudbury, Thunder Bay and Sault Ste. Marie. There are a limited number of specialists also in Timmins. So travel to see a specialist is much more extensive or

longer than a trip required by a person in southern Ontario, who would have access to specialty services that are focused in many cities in southern Ontario.

So the design of the program was extended to include both hospitals and trips to specialist services, again, the criterion being the closest place where medically necessary and appropriate care could be provided. It was also decided in deliberations that time was a consideration, and it was decided then that the administration of the program should be carried out by the Ontario health insurance plan.

The forms the program is designed around are quite simple in their design. A general practitioner or northern practitioner—it does not necessarily have to be a GP; it could also be a dentist and a number of other specialties as well—signs the form and makes the referral, and then the specialist providing the service or the hospital providing the service signs a form that the service was rendered.

Based on those two criteria, the form can be submitted to OHIP and the claim will be paid, assuming the criteria of the program have been met: first, that the distance criterion has been met; second, that in this case, if there was a request for an accompaniment grant, the individual did in fact travel by a third-party carrier, as distinct from an automobile, where, obviously, the cost of carrying the second person would not add to the travel program cost; finally, that the person had all the necessary signatures and so forth with regard to the application.

The program has been relatively successful. In turn, in response to Mr. Campbell's question, we have tried to design some flexibility, I think, in the program with a number of municipalities, dealing with the very circumstance you have touched upon. That is that there may be a situation where the family, in the first instance, may go to the municipality or may want to involve the municipality so the municipality can advance moneys and we, in turn, will permit the municipality to make application for the grant, recognizing that the municipality has advanced the moneys. In the circumstances, that can arise.

Those were the general criteria that were looked upon, but when the decision was made to broaden the program and the discussions looked at the questions of discretion, both by disease category and by the individual practitioner, we saw a great number of difficulties. As Mr. Sharpe described, the conclusion that was arrived at was that the basic criterion and the one that could make good sense in general policy terms was to provide the supplementary grant to those 17 and under.

Mr. Bell: Two more points: Section 5 provides that the giving of a companion grant under 18 is discretionary, where it says "may" be entitled to a grant. When is that discretion ever exercised to refuse an application, or has it ever been?

Mr. LeNeve: Perhaps Mr. Gibson can elaborate on this. I do not think it was meant in that sense. There may have been applications we receive and we find that the person in fact travelled by automobile but he has applied for the grant, but I do not think there has been any discretion in the sense that, if anybody meets the basic criteria of age, distance and third-party travel, he would automatically receive the grant.

Just to add another example, there have been a couple of circumstances where the individual had not met the criterion of seeing a specialist. They

may have come to southern Ontario and seen a general practitioner, and it would be our view that they do not qualify for the programs. There are sufficient general practitioners in northern Ontario, so that probably would also be a basis of disqualification.

Madam Chairman: Mr. Gibson, do you have any further comments on that?

Mr. Gibson: I just want to add that as a general policy within that permissive faction, we do not pay for travel grants for travel by automobile.

Mr. Bell: No, but you read section 5 and it specifies air, rail or bus. So if you go by car, you do not even get within the section.

Mr. Gibson: You know the regulation better than I do.

Mr. Bell: Well, I am just reading it.

I take it, though, Mr. Gibson, that if there has been a grant under section 3 or 6 of the regulations and if the transportation requirements of section 5 are complied with and if the person is under 18, the practice of OHIP is that the grant is automatic.

Mr. Gibson: Absolutely.

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Madam Chairman: I just wanted to identify that Malcolm Gibson is general manager of OHIP, for the committee's understanding. Are there any more questions, Mr. Bell?

Mr. Bell: My mind is like a steel trap, always closed. I forgot what my question was. I will try to dredge it up later.

Madam Chairman: I have four people on the list, and I do apologize if your question has been answered in the interim. I have Mr. McLean, Mr. Tatham, Mrs. LeBourdais and Mr. Mackenzie, in that order.

Mr. McLean: I am finished.

Madam Chairman: Mr. Tatham.

Mr. Tatham: I just wondered how many requests for travel assistance there were in Ontario.

Mr. LeNeveu: I can answer your question indirectly. I think I do have the figure, but the program now costs close to \$10 million per annum and there would be—

Mr. Gibson: It is \$52,000 in total: \$48,000 for patient grants and \$3,300 for accompaniment.

Mr. Tatham: And those are all, of course, just for 18 years and under?

Mr. LeNeveu: No, that is the total program for persons—

Mr. Tatham: Pardon me, the \$3,300.

Mr. LeNeveu: For the \$3,300, that is correct. Excuse me, sir.

Mr. Tatham: Do you have many requests over 18?

Mr. Gibson: Yes. It is the highest reason for turning down applications.

Mr. Tatham: What percentage would you say?

Mr. LeNeveu: The two reasons are third-party travel and persons misunderstanding the program literature in terms of travelling by car and asking that two grants be paid. Those are the two key considerations that seem to arise in the program as it now stands.

Mr. Tatham: Do you have many cases where, as somebody mentioned, the child or whoever is going back not for treatment but just to be checked? Would he go on his own, or does he take somebody with him?

Mr. LeNeveu: I do not think we would be in a position to answer how many children would, in fact, travel by themselves. I suppose it could happen when you have a child of 15, 16 or 17, where the child is quite capable and may look forward enthusiastically to travelling without the parent, because there would not be the question of medical consent in a repeat visit. That could arise, but I do not think we would have statistics on that.

Mr. Tatham: These cases of blindness or, say, an older person who is going down for treatment, are they where the majority of the requests come from for an accompanying grant?

Mr. LeNeveu: I do not believe the ministry has carried out an analysis of the medical conditions associated with the requests. Mr. Gibson, you might help me in this regard. The forms are designed so that there is a very brief description of the medical condition, but I do not think we list the information as to why you would be requesting an accompaniment grant.

Although I think it would be safe to assume that the conditions might be medical, they perhaps might be emotional. They can also be, I suppose, for sociological reasons. This may be a person who has never travelled by air before—

Mr. Tatham: Yes.

Mr. LeNeveu: —and he is just more worried about the air travel than he is perhaps about the medical condition. I think you would find a whole range of circumstances in which the grant requests could come, all legitimate in the individual's mind, I would think.

Mr. Tatham: Thank you very much.

Mrs. LeBourdais: Madam Chairman, in view of the hour—and being new to this committee, I do not know how strict you are about following that—I have two or three questions. Should they be addressed now, or would it be better to start again—

Madam Chairman: I would suggest that we finish with the three people who are on the list, then close for a lunch break and return with Ms. Morrison doing her summation. There will be an opportunity at that time to ask any final questions before we make our decision. I suggest that this portion of

the program finish, if it looks as though we can do it in the next 15 minutes. It would be appropriate, I think, to try to have an official cutoff time.

Mrs. LeBourdais: I will try to be as brief as possible. Certainly, some of my thoughts have already been addressed specifically by Mr. Mackenzie and Mr. Bell.

I just want to clarify that in the present legislation, other than stating the cutoff of 18 years of age, there is nothing to take into consideration someone who is in excess of 18 years of age, such as a senior, who for a variety of reasons—balance problems, fear of flying, going to the big city, whatever—might require accompaniment, or the person who is 18 years of age but has a mental age of something less. There is nothing to look at those particular aspects. Is that correct?

Mr. LeNeveu: Not in the regulations as they stand under the Ministry of Health Act; that is correct. However, I think it is also true, as was suggested earlier, there are other mechanisms that come into play. Those persons in receipt of social assistance may well qualify for assistance. In fact, many municipalities, even if you are not on assistance, may extend assistance financially in those circumstances, but not in terms of the Ministry of Health Act and the regulations as they now stand.

Mrs. LeBourdais: It seems odd that during the drafting of the current legislation those kinds of circumstances which came forward at this committee very quickly, which seem somewhat obvious, would not have been addressed.

The other thing I would suggest to you is that, regardless of the age of 18, it seems to me that once a person has been informed of serious illness or is going for testing that might lead to the confirmation of serious illness, some of the qualities we associate with an immature person or a child might come to the fore. It is the stress of hearing that you have a terminal illness. Circumstances have come forward where someone has committed suicide shortly after hearing those things. It seems to me that under certain circumstances and with certain individuals, having someone close to them go with them to hear the bad news might be a very strong need. I wonder if you care to comment on that.

Mr. LeNeveu: I share your thought that, obviously, in times of uncertainty about medical condition, there can be a great deal of stress, and I guess in virtually every circumstance there would be tremendous stress on both the individual patient and perhaps the spouse. However, in designing the program, that type of thing is very difficult to deal with. The program, therefore, was designed to limit it to the circumstance of 17 and under. But I do not disagree with your comment that obviously those types of emotional circumstances will legitimately arise.

Mrs. LeBourdais: I have just one other point then. It is my understanding that Air Canada does have a limited subsidy program for those individuals who accompany a patient on a trip. Are you familiar with that and can you expand on that at all?

Mr. LeNeveu: Yes. There is an expanding and evolving set of program criteria coming out from the Canadian Transport Commission itself, because this has been a continuing problem for all third-party carriers—airlines, buses and railways. I am conscious, Madam Chairman, of your remarks, but I will try to touch on the question being raised.

The federal government, through its agencies, has been putting increasing pressure on the airlines to devise their own policies, recognizing that there can be a circumstance where an individual legitimately wishes, for medical reasons, to travel and requires accompaniment. Therefore, they are starting to move towards policies that only one air fare would be charged or there would be a subsidized rate. There is a whole series of things moving into place which will also be a consideration as the government itself reviews the programs in the future.

At one stage, in fact, as the program was being designed, we did hold some discussions with the airlines as to what they foresaw as their future policies, recognizing the federal initiatives that were being taken. The discussions were very positive, but the airlines themselves, at that point in time, about two years ago, felt very circumscribed in what they could or could not say, because they really did not know what policies would evolve airline by airline. At that time, Canadian Pacific was in the room, Air Canada was in the room, some of the northern airlines as well were in the room and norOntair, the government-owned airline, which participated in those discussions.

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I think in time, as policies evolve in terms of third-party carriers, it will raise a major policy issue for the government, because to the degree that the carriers themselves come up with compassionate policies, the government then will have to start to give consideration to what extent it should design its own programs, using taxpayers' dollars, to pay for travel and how the balance between the airlines and their policies of compassion, perhaps federally initiated, should be thought about. There may be opportunities in redesigning the program to achieve more circumstances of supported travel and perhaps also long term over the next four or five years saving the taxpayers money in terms of some portion of that \$10 million that has now already been put forward. That is something that is evolving now and starting to come into place and something that requires further consideration.

Mr. Mackenzie: I hope we do not get sidetracked into the third-party possibilities in the decision we have to make here. This may not be totally fair to the ministry, but three things struck me. One was the comments on page 23 about this unsigned internal documentation where it was proposed that in the second year of operation of the program, hospitals be allocated an additional 15 per cent of the previous year's expenditure to administer on a discretionary basis grants for the accompaniment of patients over 18. One comment we have actually came from Dr. Hill's letter in the investigation. Other than the 18, which seems to be what you really hang your hat on, there were two other comments from the ministry: (1) that the northern travel grants were under review—I just forget where it is, but in one of the letters—and (2) the possible need for a legal opinion from the Ministry of the Attorney General.

I am not trying to be provocative, but I am wondering if that indicated on the ministry's part either some understanding that the 18 rule may be a little too rigid. Were you really taking a look at some change or—I guess in my jargon—was it just a copout trying to look like something was going on here to answer some of the questions that were being asked?

Mr. LeNeveu: No. The program has, as we have indicated, been in place for a very short period of time. The program has been reviewed internally already. One change I mentioned was the 300-mile/250-mile change in

policy. There also have been some informal discussions with the medical profession in northern Ontario as to what its thoughts are, both the specialists and the general practitioners, and how the program might be improved, but as to whether a change in policy will be made by the government in the future with regard to this particular element of the program, I am really not in a position to comment at this time.

Mr. Henderson: The position of the ministry, as I tried to distil it in my mind, is something like this, that the arbitrary 18-year-old cutoff may be discriminatory, but to individualize the determination of eligibility on the basis of need, medical need or any other kind of need, just is not workable and, therefore, the discrimination is not improper. Is that essentially what you are saying?

Mr. LeNeveu: I am not a lawyer, but my own personal view is it would probably be along that line, yes.

Mr. Henderson: OK. I guess the question that would arise in my mind then would be the assumption that it is unworkable to individualize it. If that indeed is the case, then you have to have some kind of a limit presumably and a discriminatory one may be defensible, but it all rests on the assumption that some kind of a reasonable, flexible, individualized determination cannot be made. I find myself wondering about that.

Do I understand correctly that even if it is much, much cheaper for a parent driving a child than going by air, rail or bus, the requirement of the ministry is that the least expensive way be set aside in favour of something that might cost very much more?

Mr. LeNeveu: In the design of the program, with regard to that question, the grant formula that is currently in place tried to take into consideration two elements: distance and mode of travel and, I guess, time, in a sense. In designing the program, basically there was an attempt to establish the travel grant at about three quarters of the regular air travel economy cost.

Therefore, if the individual opted to travel by air from Sudbury, as an example, to Toronto—I guess Sudbury to Toronto would be about a four and a half-hour drive—perhaps it would be two hours or so. Allowing for time in the terminals and so forth, it may well be over two hours. In any event, if that was your decision, the contribution would be there, and it was a flat, distance-related grant. I guess there are about seven gradations of grant, from \$125 to about \$350, depending on distance.

The other problem that we ran into in designing the program is we decided to use land distances, but if you fly from Sault Ste. Marie to Toronto the distance is much shorter than if you drive. If you fly you go across the lake, whereas if you drive you go in the shape of an L. If you were to work out the costs of the grant in terms of automobile operation, allowing for gas, oil and something towards depreciation of the car, the grant would probably cover something over 100 per cent of the cost.

However, if you were to travel some distance, and I think some people elect to do that, you may be into other ancillary costs, such as meals. You may even decide to stay overnight. Therefore, to make the grant as simple as possible administratively, this formula was established. Again, the basis of the formula is approximately 75 per cent of the air fare.

Mr. Henderson: Seventy-five per cent of the air fare regardless of whether you go by air, rail—

Mr. LeNeveu: Regardless, yes. It is a flat-sum, distance-related grant. That is correct.

Mr. Henderson: Why does the ministry care how you get there?

Mr. LeNeveu: We do not care. The only point that came up in the design of the program, and the reason the question was asked whether if you drove your car, the grant for driving with the child in the car would be sufficient, because the child would not qualify for the grant, and you would apply for a supplementary grant. If in that same circumstance the family opted to come from Sault Ste. Marie by air, there would be two airplane tickets. If the car drives down with the child in the car and the adult drives the car, then the operational costs of driving the car are the same, whether there is one person or two in the car. That is the only reason that particular element is in the program.

Mr. Henderson: I guess my point is just that it seems to me the policy ought to be devised in such a way as to encourage people to do it the least expensive way. Without going into a whole lot of study of it, I am just not totally convinced that is the way it is done.

Mr. LeNeveu: I see. I do not disagree with you, but I guess another consideration will be with the family. If the individuals are rather worried about it, they may not want to drive down. In that circumstance, they may wish to take a third-party carrier. I do not know. In any event, in designing the program, the government tried to be neutral on the mode of transportation.

Madam Chairman: Mr. Bell has just remembered that one last question.

Mr. Bell: Yes. Mr. LeNeveu, there is reference in the material to one of the reasons the ministry has been reluctant to expand the program and give discretion to either hospitals or doctors, but particularly doctors; that is, it may expose them to some legal liability. Can you explain to the committee what is the increase in potential liability on the part of a doctor, if the program is expanded, that is not already in existence?

Mr. LeNeveu: My own personal view is that the pressures on the general practitioner would be increased. This was recognized in the design of the program. In fact, in talking with general practitioners in northern Ontario, some were a little concerned about the original program, as to whether GPs would—and I think there are still concerns there—be pressured to send people to Toronto or unduly long distances to get medically necessary services. Because of the relationship, the GP might be asked to do something that was not, in his own medical judgement, the appropriate or necessary thing to receive the level of care required, whatever the medical circumstances might be.

I suppose to the degree that the program has expanded, the individual now must make a decision about travel for the patient. Also, whether there should or should not be accompaniment would just expand that particular pressure. Theoretically, I suppose it is possible, but in my own view, rather improbable that there would be a legal circumstance where the doctor opted not to allow for accompaniment, an adverse circumstance did follow and, therefore, he would perhaps be held culpable in a court of law. That is possible, but I find that would be an infrequent circumstance.

Mr. Bell: In fact, the reverse is probably going to be the case. A doctor who has a patient who has to travel to a facility for treatment, where there is a concern for the patient's wellbeing on the trip, is going to give an opinion that there should be accompaniment rather than not.

Mr. LeNeveu: That is right. This is an area where my knowledge is very limited, but when there are cases against physicians for medical malpractice—we are now verging on to medical malpractice—the cases are going to be much more directed to the actual intervention that was done by the physician or whatever rather than a circumstance of this sort relating to a referral.

Madam Chairman: If we could adjourn for lunch, we will resume at two o'clock. At that time, Ms. Morrison will do her summation and there will be questions at that time. Then we will go into deliberations in camera.

Mr. Campbell: I reserve the right to ask a question, with your earlier statement, right after lunch. Is that still appropriate? Thank you.

The committee recessed at 12:23 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S RECOMMENDATIONS DENIED

TUESDAY, AUGUST 9, 1988

Afternoon Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)

VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)

Bossy, Maurice L. (Chatham-Kent L)

Bryden, Marion (Beaches-Woodbine NDP)

Carrothers, Douglas A. (Oakville South L)

Henderson, D. James (Etobicoke-Humber L)

Lupusella, Tony (Dovercourt L)

MacDonald, Keith (Prince Edward-Lennox L)

Mackenzie, Bob (Hamilton East NDP)

McLean, Allan K. (Simcoe East PC)

Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella

LeBourdais, Linda (Etobicoke West L) for Mr. Carrothers

Tatham, Charlie (Oxford L) for Mr. MacDonald

Clerk: Carrozza, Franco

Staff:

Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Morrison, Gail, Director, Investigations

Meslin, Eleanor, Executive Director

From the Ministry of Health:

LeNeveu, Ron, Assistant Deputy Minister, Corporate Administration

Sharpe, Gilbert, Director, Legal Services Branch

AFTERNOON SITTING

The committee resumed at 14:07 p.m.

Madam Chairman: Could we call the meeting to order again. May I suggest that Ms. Morrison do her summation and then I will open it to the committee members to ask any final questions they want of either party.

Ms. Morrison: I will be brief. I have only a couple of points to make, one of which you will think I have beaten into the ground already; that is, the point on the process.

On a number of occasions this morning, we talked about the difficulties of new information, of not having sufficient information during our investigation and later having that information presented to the committee. I would just like to clarify for the committee why that is a matter of such concern for us. We certainly want you to have all the information you need to make a good decision on any given case. When I am saying to the chairperson is that I object to information being introduced that we did not have before. I am not saying this so that you will have incomplete information upon which to make your decision.

Our process depends very critically on the co-operation of ministries. If we are ignored by ministries until we get to this committee, our whole process will fall apart. Most of our cases never come to this committee. This committee sees perhaps six in 5,000 of our cases in a particular year. The other 4,994 cases depend for their appropriate resolution on appropriate information from the ministries. When I am making a point to the chairperson and appearing to be very fussy about the fact that we did not get certain information prior to coming here, I am trying to get the committee's assistance in protecting our process. Our process is a very good one and I think we have always had very good support from the committee in ensuring that the process is protected.

In this particular case, there were a number of pieces of information that came up in the discussion with the ministry that were quite natural for it to provide to you at this stage, information about the various discussions it had with practitioners when it was putting this program into place, information about other programs that provide travel grants and information about the numbers of people who take advantage of the program.

All of this information, which appears to be very important for the ministry to present to you, is information that could have been provided to us before. We feel it is very important that the committee ensure the integrity of our process by making it very clear to ministries, as they have asked us to do in their last report, that the process cannot consist of provision of information only to this committee, but must consist of providing us with the appropriate information.

The issues in this case are very simple. It is not really a question of law. We have used the example of the Charter of Rights. We have relied upon that as a standard that suggests society will not allow discrimination of a certain kind, but essentially we are talking here about a program that provides benefits for one segment of the population and does not provide it for some other segments of the population that may be equally in need.

We are not talking only of the fact that it provides it for young people

and not for older people. I do not think we have made any suggestion that children are not an important part of our population to be protected in a very careful way by very careful programs. We have not argued that children should not get the accompaniment allowance. What we have argued is that it should not be confined only to children.

We are talking here about a program that is attempting to provide benefits to people in northern or distant parts of Ontario so that they are not disadvantaged as compared to people who live in someplace like Toronto. We are not talking only about discrimination for older people as against children; we are talking here about provision of an opportunity for people, for example, who have Alzheimer's disease in northern Ontario, to have someone accompany them when they have to go for treatment in the same way that someone who lived in Toronto would, of course, have someone accompany him because it would not cost any money.

I think the Ombudsman has found the program to be, in the words of his statute, "improperly discriminatory and unreasonable." We feel the regulation could be changed. We have not suggested exactly the way it should be changed because, of course, the ministry has all of the information and the expertise to make the appropriate changes that would make this regulation one that was a much fairer provision of this particular benefit to citizens of Ontario. We are not criticizing the whole program. We are criticizing the discriminatory nature of this one provision concerning funds for accompaniment in travel.

Madam Chairman: Does the ministry have any remarks?

Mr. LeNeveu: We have tried very rigorously today not to introduce new information. I can anticipate there could be a circumstance, however, where a question was not asked in the investigation, which might be asked by the committee, that would obviously then pose a dilemma.

For instance, today there were some questions about the number of claims that are processed. I am not sure if that has relevance to the case. It was not asked by the investigator, but we did provide information to the committee. The questions of law were touched on earlier by Mr. Sharpe. The law stands and the relevance of the laws of the province to a particular case, I suppose, are of interest and should be discussed.

In closing, the program dilemmas that have been highlighted today are there. They are being studied. I think the program, in terms of being available to those under the age of 18, is a very solid feature of the complexities of discretion involved in trying to categorize cases by disease, to deal with problems that would have to be faced in terms of early decision-making, recognizing that the patients may wish to travel on very short notice.

The problems in that area are immense and would be very difficult to design into a program that would be fair and provide flexibility, and yet not be subject to questions as to whether it was or was not discriminatory to an individual over the age of 18.

The ministry will continue to look at those questions. Certainly, any views that can be brought to the processes to solve that problem would be useful.

Mr. Sharpe: Perhaps I can just follow up on that; lawyers like to have the last word, if they can.

Madam Chairman: I know the feeling.

Mr. Bell: There are a lot of us in the room. Be careful.

Mr. Sharpe: I just want to reiterate. I know there is bound to be a sentiment that difficulty in putting together a regulation should not be good cause for not having it. I see our position, I suppose, as perhaps a bit different than that.

I talked in the general submission about looking at children as a class and how children are recognized by society as being a disadvantaged class that requires special treatment. I think it was that notion that made it clear that there had to be some provision or some entitlement based on age. I am sure there are cases of hardship for adults, but the notion that the Ombudsman should dictate policy to the government as to the scope of its legislative schemes through its own mechanisms I do not think is proper.

If, indeed, this committee were to conclude that there was improper discrimination, which I do not personally feel, or that there was a charter problem with the existing regulation, there may well be scope to make the recommendations that are desired. But if those arguments are not supported, while we might all agree it is a good idea to have some provision for accompaniment for adults, I believe that is ultimately a policy decision for the government.

If you look at it another way, if the government could not put forward these types of benefits without having to cast them to everyone, surely that would severely impair the development of excellent programs for those who are most in need. There are a number of reasons I just do not believe that at the present time one can say the regulation is improper.

Madam Chairman: If the committee wishes, closing questions. I think the first on my list from before lunch was Mr. Campbell.

Mr. Campbell: I guess the reason for getting into this business was the requirement where the municipal welfare systems, for example, were getting unduly burdened with a number of costs they felt were medically oriented and not social services oriented. To some, that might be a small difference, but the thing is that it led to a number of municipalities, including my own, making strong representation to the governments; I use the term "governments" advisedly because both governments were advised of this problem for quite some period of time.

I would like to ask a few questions based on some of the background that got into it and clarify some of the points that were made. At any time, in any way, shape or form, did the Ministry of Health offer accompanying grants to people for medical purposes?

Mr. LeNeveu: Beyond the existing policy?

Mr. Campbell: No. In this scope—I will address the other parts later—did the ministry at any time allow accompanying grants for people over the age of 18 going to medical services?

Mr. LeNeveu: This is a partial answer to your question. There has

been a circumstance under the ambulance services program where a patient was in hospital and there has been what is called an in-hospital transfer from northern Ontario, say, to southern Ontario. If the patient were to be transferred, let's say, from Sturgeon Falls to Toronto as an example, if the patient's condition was such, the air ambulance system would be used to transfer that patient.

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There could be a circumstance where the patient could not be treated in the Sturgeon Falls hospital and had been admitted as an in-patient. Under the existing legislation, interinstitutional transfers are paid for by the government, but it may not be necessary that the patient be transferred by air ambulance. The condition might be very severe, requiring very delicate surgery, but prior to the surgery the person could travel. That was an interinstitutional transfer and fell under that policy of hospitals, and therefore in those circumstances, the cost of the trip down to Toronto would have been paid for.

Mr. Campbell: Under the present air ambulance system, for example, if an infant were ill and the mother flew in the air ambulance with the infant child, that would be covered.

Mr. LeNeveu: That is correct. The mother would not be charged. Also, there is a policy, which is an elective policy and is a matter of chance, that if the plane were returning to the north and a patient was being discharged, perhaps back to a nursing home, the plane might be used to provide that trip back, having made another patient delivery to southern Ontario, say to Toronto. Those are not matters of policy. In those circumstances, they are, I guess, a matter of convenience. The plane is there and it might as well be used because otherwise it will fly back empty.

Mr. Campbell: OK. I want to stay out of the area of the air ambulance, because I think that is probably a more specific case.

Mr. LeNeveu: That is more difficult.

Mr. Campbell: To clarify, though, when you mentioned the costs picked up, would those costs cover only the patient, or an attendant, someone to be with that patient over the age of 18?

Mr. LeNeveu: Normally when there is an interinstitutional transfer, the institution discharging the patient may well decide to have a nurse—usually a nurse, but it could be a doctor—travel with that patient. That cost becomes a cost of the hospital making the transfer. Ultimately, it becomes a cost to the government of Ontario in the sense that the government finances the hospital's budget. Ultimately, through the global budget, the airplane ticket would have to be paid for by the hospital, and therefore, it would be financed, in a sense, by provincial moneys.

Mr. Campbell: But to your knowledge, there has been no civilian or nonmedical accompaniment covered by your ministry.

Mr. LeNeveu: To my knowledge, yes.

Mr. Campbell: On page 2, about the patient who was dealt with who had open-heart surgery in the McMaster centre in Hamilton, the patient was transferred from, I believe, Thunder Bay to Hamilton. Your ministry, under the

program, transferred that patient. I assume the patient's travel costs were covered but not the attendant's in that case.

Mr. LeNeveu: I would distinguish between the ministry transferring the patient—

Mr. Campbell: OK, I see what you are getting at.

Mr. LeNeveu: The physician may have recommended that the patient required surgery. In the circumstance, it would be bypass surgery. The patient would have therefore been referred to a surgeon in Hamilton, the surgery would have been done, the patient would have returned to his or her community, and at that point in time, a travel grant application would have been completed and forwarded to the Ministry of Health. The point in time when the Ministry of Health would become aware of the circumstance might well be four, five, six, eight or nine weeks after the surgical procedure took place. In a sense, we partially reimbursed the family for the costs involved, but we were not involved in the transfer of the patient.

Mr. Campbell: I guess the point of my question is that the decision was made by the doctor to refer to Hamilton rather than to, say, Sudbury Memorial Hospital, for the same procedure that has been done for some 20 years. The doctor made that decision and you went along with the decision of the doctor.

Mr. LeNeveu: Yes. We have worked very carefully to try to encourage referring physicians to use the facilities that are closest to the centre the patient lives in, where appropriate care can be provided. I agree that there could be triple-bypass surgery provided in Sudbury; I think that is what you are suggesting. There may be a series of circumstances as to why that was not the appropriate setting. Partially, it may be a waiting list; there could a number of problems.

In addressing that particular problem, the government has attempted to encourage and foster a growing climate of exchange between the general practitioners in northern Ontario and the specialists in northern Ontario. There is a problem of communication in northern Ontario, as we all know, because you could have a group of GPs in the Kapuskasing area who may have very little exposure to the practising specialists in, say, Sudbury.

The best way for that to be improved is by having the specialists travel out. There have been a number of programs put in place in northern Ontario to achieve that very end, because it does two things. The northern travel grant program is very successful, but if you are talking about, say, ophthalmology services, it would be much more practical and much more sensible, in terms of normal office care, if you could encourage the ophthalmologist to visit Kapuskasing, coming perhaps out of Sudbury, and perhaps see seven or eight or nine patients, than to have seven, eight or nine patients take a plane in the cold of winter to go down to Sudbury to have a basic eye examination that only an ophthalmologist can provide.

The other benefit that flows from that exchange is that the general practitioners will become familiar with the ophthalmologist who may be in Sudbury, because the general practitioners may be aware only of some of the practitioners back in Toronto whom they knew from their school days or whatever; collegial links are long-standing in the medical profession.

The cross-fertilization is a very good thing, and from a taxpayers' point of view, it probably also saves money. From the practitioners' point of view, a better linkage is developed and the skills become better known by the GPs across northern Ontario, out of the major centres; and, obviously, the patients are put in the position that they do not have to travel for the necessary care. I am talking about office care as distinct from surgical care. They may well have to travel for the surgical procedure if a surgical procedure is required.

Mr. Campbell: OK, but going back to my original question, I appreciate your answer, but it is ultimately the doctor's decision to refer that person to him rather than Sudbury or any other community: Winnipeg or Thunder Bay or Sault Ste. Marie.

Mr. LeNeveu: Yes.

Mr. Campbell: So you are saying it is appropriate for the doctor to make a medical decision based on his knowledge of where he thinks the program can do the best good, in a medical term, in a hospital setting in a community outside of the home community, but it is not appropriate for a doctor to make a decision that somebody needs some mental, emotional or other help, having somebody in with that person to help him through it? Is that basically your ministry's position?

Mr. LeNeveu: The ministry is of the view that—and I touched on this in my earlier remarks—the involvement of the GPs in the program in northern Ontario has been very, very helpful and very supportive. The decision to transfer a patient for specialist care or to pick the hospital setting is also a key consideration, but to make decisions as to whether the patient on the way down may require accompaniment, or in turn may or may not require accompaniment on his way back, provides a lot of discretion into the program. The government has been of the view that to make it the physician's responsibility would add complexities in terms of unevenness of administration. At the moment, the view is that the way the program is designed is the appropriate way of structuring it, to divide because of the special requirements associated with those persons 17 and under.

But I agree with you that there would be circumstances where the doctor could exercise that discretion. That would expand the program in a policy sense. That is a feature that has been under consideration, but there are a lot of complexities in that sense.

Mr. Campbell: Yes.

Mr. McLean: They cannot do that now?

Mr. LeNeveu: The program as it is now designed does not provide that feature.

Madam Chairman: Do you have another question, Mr. Campbell?

Mr. Campbell: Yes. I have a couple more, if I may. There are a couple of issues here that I think bear some exploration.

I would like to turn now to the municipal system of remuneration to those people who are on a social assistance allowance and who would require some assistance. Does your ministry have any figures that show that you would

reimburse a municipality for such services if the person qualified under the present conditions and under the present standards?

Mr. LeNeveu: This is not an area that I am knowledgeable in, but if a patient were to receive assistance from a municipality through general welfare assistance, there is a cost sharing. My recollection, and I could well be wrong on this, is that the cost sharing is 15 or 25 per cent by the municipality, the residual being paid either by the province or the federal government through the Canada assistance plan. I am not sure of what the percentage sharing is. I think it may vary.

There may be further assistance for small municipalities in northern areas, but I am not sure if that is a feature of that arrangement or not. But the primary portion of the cost of that assistance is borne by both the province and the federal government.

Mr. Campbell: Yes, but in this case where the municipality is under the CAP agreement with the federal government, you pay 40, the federal government pays 40 and the municipality usually pays 20?

Mr. LeNeveu: I am not sure. I think it is something like that.

Mr. Campbell: Maybe it has changed. I have not been there for years. In any event, some of that money does, in fact, go back to the municipality rather than the individual. That grant goes back to the municipality.

Mr. LeNeveu: The mathematics of the administration I am not familiar with, but I presume there are annual payments by the Ministry of Community and Social Services based on persons on general welfare assistance, special payments that fall in the category you are describing.

There is a billing by the municipality of its expenses to Ontario and a reimbursement by the province if it is 80 per cent. If it is 80 per cent, the province would pay the 80 per cent to the municipality and then in turn recoup from the federal government the 40, if the mathematics are correct.

Mr. Campbell: In any case, though, it is mainly in this situation. What I am really after is the amount of funds that would fall into that category out of the \$10 million you provide for this program rather than individuals.

Mr. LeNeveu: I cannot answer that. It would be a very low proportion. As I have mentioned in my earlier remarks, there is a provision whereby moneys can be advanced by the province and then in turn, under special features, the municipality can apply directly to the Ministry of Health. That is a very small proportion of the total \$10 million. I am sorry, we could get the figures for this committee, but I do not have them.

Mr. Campbell: No, that is fine.

Ms. Bryden: I just really have one question that bothers me, that is, the northern health travel grant program is not technically part of the Ontario health insurance plan. Is that correct?

Mr. LeNeveu: That is correct.

Ms. Bryden: But it is so closely allied to it that when a grant is made the actual cheque comes from OHIP. Is that also correct?

Mr. LeNeveu: The cheque is prepared using the OHIP administration. Technically, it is not paid out of the Health Insurance Act. But the administration of the program is carried out by the staff associated with OHIP. That is correct.

Ms. Bryden: But it is a program designed to equalize access to OHIP. As we all know, the principle of OHIP is that medical services are available to the entire population under the OHIP system of premium payments and entitlement. Practically the whole population is covered or almost all are. It is a principle of OHIP that everybody pays the same for the same service or all get the same service without any charge against them.

Is there any OHIP service where there is discrimination on the grounds of age in the granting of service? Is there any OHIP service that is not available to the general population covered by OHIP, where there is an age distinction in the kind of service given.

Mr. LeNeveu: Under the Health Insurance Act, the benefits are not restricted by age, although I suppose—and I am sure this is not the intent of your question—there are certain surgical procedures that go with age or go with sex. The benefits are universal. However, the decision as to whether the service should be rendered is basically, in most instances, a medical decision by the physician with the patient as to its medical necessity. Assuming it meets the criterion of medical necessity and is an insured benefit, it would be paid for under the Health Insurance Act.

Ms. Bryden: So really this program was put into effect, it seems to me, to equalize access to OHIP services. Therefore, to provide the grants only to people under 18 seems to me to be denying one of the principles of OHIP. If we are trying to equalize access to OHIP by this program, then we are nullifying the objective of the program. For a long time, it has certainly been talked about, as to how to overcome this distance gap and this extra cost to people in northern and remote regions. Is this not a strong argument for eliminating the age discrimination and leaving the regulations to set the criteria under which the service would be rendered when a doctor or a hospital decides that the patient requires this kind of accompaniment service?

Mr. LeNeveu: I suppose I would answer the question this way. Technically, travel is not an insured benefit under the health insurance plan anywhere in Canada. However, there is a recognition, as you pointed out, that some patients may have to travel a greater distance to receive medically necessary services. To that degree, special programs have been designed to try to overcome that problem. The ambulance service system and the air transport system is an example of trying to respond to that question of accessibility. Again, it is involved in actual transporting of the individual, not in providing a medically necessary service. There is a distinction.

Obviously, this program also was designed to provide every person in northern Ontario with the opportunity to have his own travel paid for. It had one additional feature, that there would be a payment for a person not involved in receiving medical services but accompanying that patient, which is an additional one step further removed from the provision of a medically necessary insured service.

I agree with the thrust of your question. Obviously, to the degree that the argument is as to whether it becomes discriminatory, I suppose in a sense it does. Mr. Sharpe tried to deal with that. In societal terms, there is a

class of persons who has special circumstances. There is a requirement for that group as a class to have medical consent. As a class, they would probably virtually always require accompaniment. As a class, because of age particularly, there may be a lot of emotional reasons—which is where you start to cross the line—why they should have this additional feature, and the government has added that feature through the travel grant program of supporting persons in the north who have to travel with this added support.

Again, with each step you are moving further from the provision of health care services as provided for in the Canada Health Act.

Ms. Bryden: So it is a question of where the Ministry of Health's mandate ends and where something else begins, either the private pocket of the patient or welfare. I very much doubt if most welfare programs provide extra payments of this sort for medical travel. Usually, people just do not travel if they are on welfare because they are not authorized to make that kind of major outlay.

It seems to me that if we really do not want to nullify OHIP for people living at distances, we have to have a program like this. I am very glad it was put in, but it has to be a complete program for the entire population.

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Mr. Tatham: I have two questions, one to the Ombudsman. You talked about, was it six in 5,000 that you had problems with?

Ms. Morrison: The six in 5,000 figure was the number of cases this committee might hear compared to the number of jurisdictional investigations we do a year.

Mr. Tatham: Just a general question. Is there much foot-dragging on the part of government departments not giving information, or do you have to go out and give a crowbar effect to get the information out of them?

Ms. Morrison: On the whole, we get very good co-operation from the ministries. I think our concern and the concern I have expressed this morning has been, if ministries knew that they did not have to provide us with information, that they could wait until they came to this committee, you would see a lot more cases here. When this came up in the committee at the last hearings, it was with ministries that had never appeared before this committee and they did not realize the process. We cannot say that of the Ministry of Health, which has appeared before this committee on a number of occasions.

I think what we are trying to stress is that very few cases now come to this committee—six in 5,000 come to this committee—because we get good co-operation from the ministries. What I would not like to see is a situation in which many more cases had to come to this committee because we could not pry information out of ministries.

Mr. Tatham: On a scale of one to 10, where does the Ministry of Health rate?

Ms. Morrison: These are very brief responses compared to what we usually get from the ministry.

Mr. LeNeveu: I am not sure, in fairness, that any additional information that was provided today is anything but useful background information. I am not sure there has been anything added to date that is substantive to the case.

Madam Chairman: I would agree that it is not substantive. Perhaps Ms. Morrison was trying to explain the apoplexy that was going on among some of the members, the chairman and herself, just because of our concern that new information would come forward, and for those who are substituting today, they may not understand the basis for that. Perhaps you just expanded on some things you have raised previously. You could have done so in a letter maybe, but I think we agree that substantive issues have not come forward.

Mr. Tatham: This is a general question again. If you started from scratch, what changes would you make in the rules to provide funds for people accompanying patients, if you wanted to start right from ground zero?

Mr. LeNeveu: The ministry has indicated in its correspondence that the program in a sense is still evolving. I am sure over the years the program will change from the way it stands today. It is changing for a number of reasons which we have tried to touch on today.

The understanding and utilization by practitioners in the north is a changing phenomenon. As that changes, I am sure the way the program is designed will change. The policies with regard to which providers can authorize trips to specialists have been expanded. It started with doctors and was expanded to include dentists and other practitioner groups. That is an added feature which has strengthened the program.

To anticipate what might become the policy with regard to accompaniment is a matter still under consideration by the ministry. The first decision of providing accompaniment grants for those persons 17 and under is working out very well. The problems that are associated with expanding the program and getting into the areas of discretion are complex. There may be solutions to them, such as the question of trying to decide by disease category that the patient is in or out.

There has been reference to the blind. There are degrees of blindness and degrees of capabilities. Some of those people are quite capable. Alzheimer's disease is a disease that may take seven, eight or nine years. Obviously, you are capable of travelling, fortunately, for some period of time, but unfortunately thus far, in terms of our medical knowledge, it is a situation that does tend to deteriorate over time, but that does not happen quickly.

Obviously, the question over a decade is when does the patient cross the line, even if the patient has Alzheimer's, as to when the patient does or does not require accompaniment. Those are very difficult problems. Fortunately, as the remarks indicated, there are other mechanisms that are in the communities, the northern communities particularly, that do support through municipal grants some assistance.

We are still studying that question, whether we would redesign that feature a different way, but thus far the policy of the government has not changed. There have been a number of features of the initial design of the program that have changed, in terms of authorizing practitioners.

As I indicated earlier, we are also getting a response from the health professionals in the north. There is growing dialogue. From that process, I am sure they will make some suggestions as to how procedures and the scope of the program might be changed. But that is a question of anticipation of government policy change.

Mr. Tatham: If we opened it up and said, "OK, there are no rules. Everybody can have somebody go along with them," what do you think would take place?

Mr. LeNeveu: I suppose there would be indications of abuse. It is a very expensive program, \$10 million. You might well find people who were travelling for other purposes applying for the grant, where the patient in fact did not require, nor really perhaps want, an accompaniment. That would, in my own judgement, cause a problem because there would be stories of abuse of the program, that somebody came down, just to cite an example, from Timmins and the accompanying person was really going to see the Blue Jays—win, we hope. That would go back and be common knowledge. Once that sort of thing starts to happen, other people will say, "Well, gee whiz, why shouldn't I be able to do the same thing?" That is the difficult portion of it.

Also, to the degree that might start to happen, the willingness of the medical profession—if they were the persons who were exercising their authority or discretion, that feature of the program would start to spin apart because of the pressure. I can visualize in my mind: "Well, Dr. Jones authorized that trip, and it was pretty questionable. Everybody knows that. Why won't you do that for me, Dr. Smith?" It would put a lot of pressure on him, as an individual practitioner, to perhaps shade his judgement as to whether there was or was not medical necessity. The cost of that, from the taxpayers' point of view, is potentially relatively high, because the grant can vary from \$125 to \$350.

This is a very conjectural area. I feel uncomfortable trying to respond to your question because it is hard to anticipate whether that would happen, to what degree it would happen or how it would happen. But eventually, in time, there would be examples of some abuse, no question.

Mr. Pollock: We have talked quite often about people travelling from the north down to the south and yet we recognize there are some excellent medical facilities in the north. Do you see this travel grant having a negative effect on any of the medical facilities in the north?

Mr. LeNeveu: I had indicated earlier that in the design of the program the Ministry of Health did visit the five major northern communities: Thunder Bay, Timmins, Sudbury, Sault Ste. Marie and North Bay. The intent of that trip was particularly to meet with the specialists and hear their views, because they had expressed a very strong concern that the taxpayers' money would be used to bypass their growing centres of excellence.

My personal exposure is indirect. Since the program has started, I have not seen any great degree of correspondence from specialists stating that the program in fact is being abused, although the example was raised that there may well be trips where the patient could have gone to community A but went to Toronto. That is a possibility, that there was a capacity to deal with the problem in, say, Sudbury.

I do not think that is a major problem. It is probably too early, but over three or four more years of experience, and this is a personal observation, one would be able to assess that there seems to be a greater number of trips coming out of the Tri-town area, which has a population of 10,000, in comparison to Elliot Lake, which has a population of 10,000, and one might see that it might require some special consideration—I do not want to use the word "audit"—in an assessment way.

My own view is that the most successful way of doing it is that the Sudbury specialist services, and this is a key feature, which can be a problem—the specialists in northern Ontario are hard pressed. The case load on them is very significant at the present time, but the number of specialists in northern Ontario is growing and, therefore, there may be an opportunity to improve the links between Tri-town and Sudbury by a dialogue between the practitioners.

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In the final analysis, in most instances, it is the general practitioner, in concert with the patient, who probably gives some alternative suggestions to the patient and in a sense perhaps—I do not want use as strong a word as "directs"—suggests a course of proceeding which the patient may well follow. Therefore, the GPs over time can become more familiar with the strengthening services in northern Ontario.

That is an evolving situation and in time that will save the taxpayers money too, because less people will come to the south and more people will go to the north. In turn, with the growing supply of specialists in this province, I think we are going to see increasing willingness of specialists to locate in the northern territories. Over four or five years, this process of back and forth will strengthen the program and perhaps reduce the use of the program in financial terms.

Mr. Pollock: One of the cases before us was a hip replacement. Are there not facilities in the north which could do hip replacements? That is very commonplace, I thought, in this day and age.

Mr. LeNeveu: I cannot comment on the circumstances surrounding it.

Mr. Pollock: This might be a special case.

Mr. LeNeveu: In most instances, hip replacement would be done in teaching centres, but there is no question that the capacity is expanding to do the more complex procedures in the north.

Mr. Mackenzie: Just two or three things that continue to bother me a little: Do you really feel there would be any problem with doctors or general practitioners in terms of making a recommendation that there was a real need for somebody to accompany a patient, whether the patient were over 18 or not? Obviously, we had one such recommendation in one of these cases before us, very specific from the doctor; I have difficulty in thinking that a medical person is going to have some difficulty in making that kind of recommendation if he feels there is a need for it.

Mr. LeNeveu: If you are asking if a doctor could make a recommendation, I would think yes. Obviously, a doctor could make that recommendation.

Mr. Mackenzie: Do you have any feeling that they might be reticent about taking on that responsibility?

Mr. LeNeveu: I tried to indicate that there has been a concern that the burden placed on physicians is something that has to be carefully monitored. There are burdens of several sorts: whether there is or is not the need for a medical referral and the appropriate place for that referral to be sent. This would be an ancillary feature: whether the patient does or does not require accompaniment. That in turn subdivides: Will he require accompaniment on the way down, on the way back or both? There are a lot of complexities in that type of discretion.

If you are asking if a physician could make a recommendation, obviously he could.

Mr. Mackenzie: I guess I was going a little further than that. Do you really think he would have reservations about it?

Mr. LeNeveu: Some might, some might not. I tried to indicate examples earlier of where the problem would come. If there is a sense that the program is becoming lax, the pressures from individuals may well mount on the physicians. In the very small communities, there might be two or three GPs in northern Ontario. In the northern communities, there is probably a stronger collegial linkage between the physicians and the residents in that community.

Mr. Sharpe: At the risk of being censured by the committee for attempting to be counsel to a committee member, at the lunch break Dr. Henderson, as a physician, expressed the opinion that physicians would be quite reticent and that he felt it was an improper and unfair burden to put on them. Again, I am limited in how far I can go in representing his views. Certainly, those physicians with whom I have spoken see this as quite an onerous burden and one that would not be welcome.

Mr. Mackenzie: If I can go back for a minute to the over-18/under-18 argument, I have some difficulty with stressing the fact that we are all interested in protecting younger people or being aware of the vulnerability of younger people. Surely you recognize that there probably can be any number of cases made where an over-18 is going to be in more need, in terms of specific emergencies and health situations, of accompaniment than an under-18.

It could be the example that has been used here of somebody who does not have a mental age anywhere near 18. It could be any number of serious sudden illnesses, somebody not knowing whether he is going to live through an operation or something. I can think of cases that have come into my own constituency office where the need of an older person would be a lot more than that of a younger person.

I can use my own situation. I went to sea when I was 15. Some people say I have been there ever since, but let me tell you, the idea of somebody having to travel with me when I was 16, 17 or 18, when I had been almost totally around the world, was, to me, just ludicrous. But I know people who have been into my office who really would need the assistance.

The point I am trying to make is, can you not make as good a case for the over-18s as you can for the under-18s in terms of their need and whether it is going to help them in some situations?

Mr. LeNeveu: I would not disagree that there are some circumstances where a person over 18 might require accompaniment.

Mr. Mackenzie: The other final point that bothered me just a little bit in your summing up was the comment that indicated that it would be inappropriate for the Ombudsman to be—I do not think the word you used was "dictating"—but outlining to the ministry what its policy should be; that is the minister's role.

It seems to me that the Ombudsman is really the court of last appeal in cases like this. He certainly would not be doing his job, in my opinion, if upon his investigation, fairly thorough and based on the evidence before him, he did not make recommendations, even if those recommendations should suggest a change in government policy. It seems to me that is an obvious role of the Ombudsman, and not to have that right really puts at risk the entire idea of the Ombudsman. I just got the impression that surely the Ombudsman should not be dictating government policy.

Mr. LeNeveu: I am not sure that I made the remarks, but I hear what you are saying.

Madam Chairman: Any further questions?

Mr. Bell: Just a couple.

If the companion travel grant program, in the hypothetical world, were expanded, would it be better to make it available to those to be accompanied based on medical need, rather than throw it out to the world and make it available to everybody?

Mr. LeNeveu: That is a difficult judgement call to make and begs a policy question. There has been argument, implicit in these cases, of financial need. I can visualize again, if you want to analogize, a very wealthy person who has a significant medical need for accompaniment and another circumstance where the medical need may be relatively marginal but the financial need is greater. That is an either/or question and it is a pretty hard one.

Mr. Bell: That is a fair answer. Then in the hypothetical there would be at least two criteria to be included in the expanded program, medical and/or financial.

Mr. LeNeveu: Those are the two policy aspects of the question, and that is again a matter of policy.

Mr. Bell: Right. I think you and I can both agree that in terms of financial, it would certainly be unfair to ask the medical profession to make that determination. It would be unfair to give the responsibility to the medical profession to determine a patient's financial need for entitlement to the program.

Mr. LeNeveu: I am not sure that they would accept it. Again, it is a very difficult issue.

Mr. Bell: And I do not think they should have it. That would have to fall on somebody else's shoulders. Correct?

1500

Mr. LeNeveu: Again, you are getting into conjecture. If the program were designed and financed by me—

Mr. Bell: No. This is all in the hypothetical, but in the hypothetical we are not going to give that to the medical or any other health care professional.

Mr. LeNeveu: Implicit in the general welfare assistance system, in the delegation to municipalities, the very fact that it has been delegated out to municipalities is to deal with that problem, and family benefits, as I understand it, are administered by the province and general welfare assistance is administered locally because of the discretion element, the timeliness and so forth. Family benefits tend to deal with a long-term welfare situation, whereas general welfare assistance is generally designed to deal with the short-term circumstances.

Mr. Bell: Then in so far as the medical need is concerned, can you think of any group better suited than the medical profession to determine that?

Mr. LeNeveu: No.

Mr. Bell: We may have some debate from a number of quarters. I am not sure whether Mr. Sharpe was acting as counsel to a member of the committee or was acting as a witness, but I guess we could all determine at some time whether the medical profession is already making those types of judgements; for example, when patients from northern regions travel to a hospital in Toronto, whether they are already telling the patient, "You need to travel with somebody."

I think you have already answered that you did not think it would be appropriate for health care institutions to be involved in any decision-making as to medical need. Did you tell us that earlier this morning?

Mr. LeNeveu: I think I was trying to answer the question of whether the hospitals could make that decision. I was trying to indicate that many of the trips that are part of the program are to the specialist in his office and the institutions are not involved in all these decisions. Obviously, on the other aspects of that, even if you were to place the responsibility with an institution, an institution is a group of people, and the medical staff, the hospital administration and so forth would become involved in the issue. But the design of the program precluded going that route, because it would be administered by the Ontario health insurance plan and it would have a broader scope than just institutional trips.

Mr. Bell: Last question: are you aware or is the ministry aware of any specific opposition or resistance on the part of the medical profession to being involved in the exercise of any such discretion if the program should be expanded in this way?

Mr. LeNeveu: I am not sure you can give a general answer to that question. The medical profession is a group of individuals. I do know that during the design period there were a whole host of concerns in terms of how the program should be designed to involve the medical profession; obviously, they would play a key role in any changes in the program. But I do not think I

can give an answer and say that the medical profession view is this or that because I do not think there is such a view.

Mr. Bell: All right; that is a fair answer. Those are my questions, Madam Chairman.

Madam Chairman: I think it is appropriate that we wind up as quickly as possible now and go into decisions, so do keep your questions to the point; I would appreciate it. I would like this to wrap up in about five minutes.

I would like Dr. Henderson to have an opportunity to make a comment at this point, because some things have been said on which he may have a special perspective. Mr. Campbell is on the list. I have no others on the list at this time. As I say, please keep in mind that we would like to go into the decision-making process.

Mr. Henderson: Madam Chairman, it is a slightly different question than that, but it will be very brief if you think it is appropriate to allow it.

Since we seem to have got into this question of alternative ways of gating the entitlement, I simply want to ask, so that it will be in the record, whether any consideration has been given to involving the local health unit in that kind of decision, under the supervision of the medical officer of health, but presumably a person in the health unit other than that individual who would have overall responsibility for making those kinds of judgements.

Mr. LeNeveu: The local health units and the district health councils in the north both have played a pretty key role in the evolution of the program to date, including the period leading up to its inception. There are advisory groups in the north, and we are trying to foster and strengthen this mechanism where you have co-operation between the hospitals, the general practitioners, the specialists, the local health unit and the district health council to refine the program features. One of the issues that is being discussed is the very issue before this committee, whether the program should be restructured and how it should be restructured.

Mr. Henderson: I am talking about the decision about a particular case.

Mr. LeNeveu: If you are suggesting that the local health unit would assess the case—

Mr. Henderson: Assess the need for OHIP funding of the companion.

Mr. LeNeveu: Well, there was an earlier remark. I guess I see a problem in the local health unit. I am not sure they would be in a position to assess the medical condition of the patient. First of all, they may not even be geographically situated to do that very thing. The distances are very vast. If you have a patient in Moosonee, as an example, it would be very difficult because there is no local health unit in Moosonee. If the issue became financial capacity, then that would probably also be outside their jurisdiction.

I see them playing a useful role in the dialogue as to what are the problems in the program and how they can best be addressed, because also, in

northern Ontario, sameness of approach in all parts of northern Ontario to solve health care problems does not necessarily work either.

Mr. Henderson: I was just thinking that if what we are talking about is some kind of balancing of medical need with economic need, my personal view is that the family doctor is not the person to do that. I just wondered whether any consideration had been given to the health unit, because maybe it could be argued to be the appropriate body to be doing that.

Mr. LeNeveu: I do not think that is being pursued in depth, whether they could do the medical assessment. We certainly looked at the question of what role OHIP could play, but we saw that being very difficult.

Mr. Henderson: They would not do the medical assessment; they would take the doctor's medical assessment and some sort of assessment of economic need and then would put it together and make a decision or recommendation.

Mr. LeNeveu: Yes.

Mr. Campbell: It must be catching. Our counsel was looking for his question. I had one more, and I do have it now.

Mr. Bell: Wait until the end of the day.

Mr. Campbell: Have you done any studies, or are you aware of any differing lengths of stay for those people on this program, for those people who might be, let's say, native Hamiltonians and those from the north who may have different lengths of stay in your hospitals because of lack of family support and the doctor perhaps not letting them go?

Mr. LeNeveu: I am not aware of any study of that sort, and I am not sure that in fact that type of study could be mounted to come to substantive conclusions. One of the problems that we face and that everybody is aware of in the health care system is that people come into the hospitals, and in particular the teaching hospitals, where, after the procedure is carried out, there is a requirement to transfer, perhaps back to another institution. That is a significant and continuing problem in the health care system. I think if we were to look into the statistics, we would find that often will be the problem, where you can discharge the patient when the patient cannot be discharged back to the home and you need perhaps a chronic hospital setting or another community bed or a nursing home or whatever. Many times there are problems of that sort facing the health care system.

Mr. Campbell: I just suggest that it may be something you would look at.

Mr. LeNeveu: Yes, it would be worth while looking at it.

Mr. Campbell: The only other comment I have is that one of the members of the committee made a comment about the poor not seeking medical help. I can assure the member that a former member of this Legislature contacted me when I was former chairman of social services in Sudbury. I would say about 50 per cent of the cases Mr. Martel presented to me were on medical travel and those kinds of medical problems that social services was picking up.

I think that to say the municipalities are not involved—I suggest to you very strongly that northern Ontario municipalities are very strongly

involved in providing that appropriate travel and appropriate medical care where it is not available in the home community.

Mr. Mackenzie: Clear evidence of a member doing his job.

Mr. Campbell: Absolutely, and clear evidence the chairman was doing his job too.

Madam Chairman: Thank you very much. The committee will go in camera now for a decision. If it looks as though we are going to be in excess of 30 minutes in making our decision. Then we will relay that on to you in the hall or wherever you choose. But please keep yourself available. We do not give an enormous amount of time to come back in, because we would like to press on with the second case after this decision is rendered.

Also, I know the Ombudsman's office is here at our disposal for three weeks, but I recognize that it is 10 after three and that the case we will begin today may very well go into tomorrow; in fact, the probability is that it will. I hope you can make some arrangements so you can be here tomorrow morning as well, because we are running behind. Ten o'clock. OK?

Mr. LeNeveu: The latest would be at 3:30?

Madam Chairman: We will make our decision. As I say, if it looks as though it is going to be more than 30 minutes, we will relay that on to you.

The committee continued in camera at 3:10 p.m.

1550

Madam Chairman: I call the meeting out of in camera session, back into a public meeting. Would someone from the ministry please come forward? We love seeing your faces.

I am sorry it took just a little bit longer, but the committee has come to a decision in the cases—let's get all these initials right—of Mr. K, Mr. and Mrs. L and Ms. M.

Decisions for all three cases are the same. It is that the committee accept the recommendation of the Ombudsman that the ministry should amend Ontario regulation 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the northern health travel grant program.

The committee reaffirmed conclusion 1 of the Ombudsman as set out in the 22(3) letter in each of the cases. The committee will be reserving its reasons and giving certain direction when it tables its report. It felt that today was perhaps an inappropriate time to rush through those, but the direction and the reasons will be tabled at that time.

We thank you for coming before us on that particular case. Given that the time is late and we did have some discussion that some of our members have somewhere to go at 4:30 p.m. because we had anticipated finishing then, I really would like us to press ahead, starting with Mrs. J and the Ministry of Health today. We will look at 4:30 p.m. to adjourn or as close thereafter as possible. We will be resuming, if need be, tomorrow morning. I am sure we will be.

Dr. Hill, do you have some opening comments on this one?

Dr. Hill: This is a complaint of Mrs. J. I have a very brief summary statement and then I will turn it over to our director of investigations.

Mrs. J and her husband have one child, a son, who suffers from a seriously debilitating inherited disorder. He is blind, cannot sit unassisted, is severely mentally handicapped and will be unlikely to live to his teens. If Mr. and Mrs. J conceive another child together, the chances are one in four that the child will suffer a similar fate.

Having considered the options available, Mr. and Mrs. J. have selected artificial insemination as a method of choice to have their second child. Although the procedure relating to artificial insemination is an insured service, the sperm necessary for the procedure is not. Mrs. J has complained to me that the ministry's refusal to pay the cost of donor sperm is unreasonable, particularly given their family circumstances.

Again, although I gave the ministry an opportunity to respond to my tentative conclusions and recommendations in this matter, the response I received did not cause me to change my views. I have therefore recommended that the ministry reconsider the schedule of benefits to include the cost of donor sperm as part of the artificial insemination procedure currently covered under that schedule.

Given the cost that the public would be required to bear should persons like Mr. and Mrs. J conceive another child with a grave disability, it seems to me to be a matter not only of justice, but of reasonable financial allocation.

I will turn the balance of my presentation over to Gail Morrison.

Ms. Morrison: The documentation on this complaint is very much like the documentation we followed through in the last three complaints, so I will not take you through it in the same detail, although I would be pleased to answer any questions once we have been through the discussion.

I think probably the easiest thing for me to do is to state very briefly what the complaint is about and to draw your attention to a couple of the documents, particularly our 19(3), the ministry's response, our final report and the ministry's response.

As Dr. Hill has said, this is a complaint by Mrs. J, who complains that the cost of donor sperm in an artificial insemination procedure is not covered. She and her husband both have a recessive gene for the Zellweger syndrome, which is a syndrome that caused their first child to have the disabilities Dr. Hill has just described. It is very unusual for a child who has this syndrome to live more than a few months.

They looked at all the options open to them and discussed the options very carefully, with medical advice, and decided that their best option under the circumstances was artificial insemination. The chance that a child will be born with this particular syndrome in the general population is about one in 30,000. That would be about the same chance of a child with this syndrome being born to Mrs. J should she have artificial insemination. If she and Mr. J have the child together, the chance is one in four that it will have this disability.

The procedure for artificial insemination is an insured procedure under the Ontario health insurance plan; the cost of the donor sperm is not insured.

For Mr. and Mrs. J to have this procedure, although the procedure itself would be paid, in an amount of about \$25, the cost of the donor sperm, which could be anywhere from \$100 to \$200 or \$300 per cycle for four or five cycles of artificial insemination, is, they feel, prohibitive. They complained to our office, and we set out the complaint in the usual notice of intention to investigate, which is found at page 9 of your material.

Part of their decision is based on their choice of this particular method of having children rather than the other alternatives available to them. One of the alternatives that is available, of course, is to conceive a child, then to monitor the pregnancy carefully and, if it turns out that there seem to be abnormalities, to have an abortion. Mrs. J is morally against that particular choice. The costs that are incurred in taking care of their present child and that would be incurred in taking care of another child with the same disability are also part of their concern.

We sent the ministry our notice of intention to investigate on January 16, 1987, and received the response from the ministry, which you see at page 11, in March. The ministry's response sets out the fact that there is no provision under the Health Insurance Act or any program within the ministry to cover the cost of this donor sperm and states that it is not anticipated that this cost will be included as an insured benefit by the Ministry of Health. They note that OHIP pays the professional fees but does not cover the cost of semen in this case.

1600

That one-page response was the first information we received in our investigation. We then went on, as outlined in our next letter, the 19(3) letter at pages 12 and 13, to get as much information as we could about the program, about the choices available to Mrs. J and about the reasons the cost was not covered by OHIP.

A number of things came to light. One of them is the fact that some other kinds of programs are covered through the Ministry of Health, including an in vitro fertilization plan. This in vitro fertilization was referred to by your counsel yesterday as the point of this particular complaint. It is not. Mrs. J is not seeking that particular program. In that program, sperm and egg are united prior to implantation in the womb, and that kind of program is one which is not appropriate in this particular circumstance.

Here we are not in a situation where we wish to have a child from two particular persons, Mr. and Mrs. J. Here the problem is that if they have the child together, the child has every chance of having this terrible disability. In this case, they wish an in vivo fertilization, that is, an artificial insemination in which donor sperm from someone other than Mr. J would be used in the process. It is the cost of that donor sperm which is not covered by the ministry's programs.

On March 25, we sent our so-called 19(3) letter to the ministry, setting out what we had found out in our investigation and setting out the tentative conclusions and recommendations relating to Mrs. J's complaint. The possible conclusion was that the Ministry of Health's refusal to assist Mr. and Mrs. J with the cost of donor sperm was in accordance with legislation which might be unreasonable. We recommended, tentatively, that the Ministry of Health or OHIP amend the schedule of benefits to include the cost of donor sperm as part of the artificial insemination procedure currently covered under the schedule of benefits.

The ministry's response is set out on page 15. The ministry was also somewhat confused by our 19(3) letter and referred to an in vitro fertilization program, but the long and short of the letter on page 15 is that the cost would not be covered.

We went on to reconsider the complaint and issue a final report. Pages 16, 17, 18 and 19 set out the letter to the ministry which covered the final report. Again, an explanation of the length of this letter with the various quotes from your committee is the same as that I gave you this morning; that is, the committee, at its last sittings, recommended that we make sure the ministry was aware of the consequences of a final report. We have adopted this covering letter as a way of making sure that before we come to this committee, everyone has an understanding of your process. The final report is set out at page 20.

Again, the response from the ministry was very brief and contained no information upon which the Ombudsman felt he could change his tentative conclusions and recommendations. Therefore, on the basis of the information gathered in the investigation and the brief information provided by the ministry in response to our 19(3) letter, he finalized his conclusions and recommendations in this case.

He again concluded that the Ministry of Health's refusal to assist Mr. and Mrs. J with the cost of donor sperm was in accordance with legislation, the schedule of benefits enacted pursuant to the Health Insurance Act, which might be unreasonable, and recommended that the ministry reconsider the schedule to include the cost of donor sperm as part of the artificial insemination procedure currently covered under the schedule of benefits.

Mr. Bell: Ms. Morrison, before you leave that, can I just focus on the conclusion at the top of page 22, the unreasonableness?

Ms. Morrison: Sure.

Mr. Bell: Is the reason for that conclusion found in the third last paragraph on page 21?

Ms. Morrison: The third last paragraph?

Mr. Bell: On page 21, where it starts, "In support of this...."

Ms. Morrison: That is our reason in support of the conclusion, yes.

Mr. Bell: Are there any other reasons?

Ms. Morrison: I think the Ombudsman's position that the refusal is unreasonable or is in accordance with legislation that is unreasonable is really based upon the whole circumstance of this situation. I do not think it is only founded on the third paragraph from the bottom of page 21.

Mr. Bell: Can you point the committee to any other place in the 22(3) report that gives the reasons for that conclusion?

Ms. Morrison: I think the general information about the circumstance in which this particular complainant finds herself is also part of the reason for the Ombudsman's conclusions and recommendations.

Mr. Bell: Meaning, when you take the particular circumstance of this particular family, to charge them for the donor sperm is—

Ms. Morrison: Unreasonable.

Mr. Bell: —unreasonable. In the recommendation, I am a little troubled with the language. You want the ministry to reconsider the schedule of benefits?

Ms. Morrison: Yes.

Mr. Bell: All right, but I take it you want them, as part of that reconsideration or after that reconsideration, to put the cost of donor sperm into the schedule?

Ms. Morrison: That is right.

Mr. Bell: There is no ambiguity on that. You are not just asking for a reconsideration of the schedule. You are asking for an inclusion?

Ms. Morrison: That is right. We have run into problems before with the word "reconsider," as you may remember.

Mr. Bell: Have these people, do you know, elected yet to take the treatment?

Ms. Morrison: No. As far as I know, they are awaiting the outcome of this.

Mr. Bell: There is no question of payment, retroactive or otherwise. All right.

Ms. Morrison: Again, this is a very simple complaint. The report is probably the shortest that has ever come before this committee. I would certainly be pleased to answer any questions you have about it, but the very issue of it is, I think, set out in the report.

I should just note that the process of artificial insemination is not one that I think we should be worrying about because of a kind of floodgate argument in terms of how many people are going to rush out to use this procedure. We have a circumstance here in which a family is in very difficult circumstances if they cannot take advantage of this particular procedure. There will be other people in this kind of circumstance, but it is not the kind of thing that you can see a lot of people rushing out to do for the pure sake of doing it.

Certainly the ministry has not raised any question of a large cost involved in this. In fact, the in vitro program, which the ministry does fund, is a much costlier program than this, requiring laboratory facilities and other facilities which are much more costly than the facilities involved in artificial insemination.

There has not been any question that that is too costly a program. I think the cost here has not been raised as a barrier. It is a matter here of the schedule of benefits providing for the procedure but not providing for the thing which makes the procedure work.

Mr. Henderson: Could you simply say in a few words how a price is fixed? How much standardization is there in the pricing of donor sperm? I guess that is what I want to get at. How is the price fixed, and why the figure of \$250 or whatever the figure is?

Ms. Morrison: It is not very standard, according to our information. It does vary, I am advised, from as much as \$50 to maybe \$250 for a particular cycle.

1610

Mr. Henderson: Is it done by labs? Who does it and how?

Mrs. Meslin: Perhaps I can help you. There are a number of sperm banks in various hospitals where specialists have handled that. It also would depend, I think, on where the person is located, whether there is an availability or it has to be shipped, etc.

Mr. Henderson: Does the hospital then price the sperm? I guess it is largely a question of the time of various people who have been involved in the collection of the sperm. Does the hospital just set an arbitrary figure? How does that get arrived at?

Madam Chairman: Maybe Mr. LeNeveu would be the more appropriate one to answer this specific question.

Mr. LeNeveu: I am sensitive to the earlier remarks about background information, but this is a relatively complex field. It might be helpful to have Dr. Proud from the Ontario health insurance plan, the director of medical services, respond to the committee in a general way about that question, because it does get into the medical side of things. I do not want to be in violation in providing information, but I think it might be helpful to the committee to hear that.

Mr. Bell: Specifically, where does that \$250 per cycle come from?

Mr. LeNeveu: There are a number of elements. When we get into it, I will touch on them briefly. It gets to be difficult. There is a fee now for the donor, in some instances, from private clinics, which raises a very major issue of public policy because there are not fees for donors of blood in this province. One of the components of that fee, which does vary from \$50 to a higher figure, focuses on that issue. There is the question of whether it is fresh or frozen, which is quite complex and which I would like Dr. Proud to talk about, and the question of medical standards. If the committee would wish, at the appropriate time we might go into that area, just as background information.

Madam Chairman: Dr. Henderson, I really want to defer to your judgement. I think we would all benefit from a little understanding of the private/public sector, insemination and how we obtain semen. I guess my preference would be to wait until the Ministry of Health comes forward so that it is packaged, but I have no objections to hearing it now either. There is a good chairman's decision, is there not? I guess normal procedure would be to hold it and then it might be actually part of the ministry's argument.

Mr. Henderson: That would be fine. A subsidiary question would be, ought there to be some consideration of simply the hospital waiving its fee, rather than going through the whole process of the hospital charging a fee and OHIP paying somebody to pay the hospital? It all seems a little bit circuitous to me.

Ms. Morrison: In terms of our own investigation, we did some survey of the costs in order to have some idea about what we were talking about here,

and our survey of various hospitals just revealed the information that the costs do vary from about \$40 to \$250 or \$300. In terms of anything further than that, we were not provided with any more information, and it was not particularly relevant to the conclusion we were coming to.

Madam Chairman: If we could make a suggestion that tomorrow, when the opening remarks are made, Dr. Proud direct a little bit of time to the attention of this specific matter Dr. Henderson has brought up, I think it might clarify a few things for us. Otherwise, I would just like to press ahead with Ms. Morrison's particular presentation. Mr. McLean.

Mr. McLean: I think I would sooner wait and hear from the doctor. I have a brother who is involved on the doctor's end of it. I would sooner wait and hear from the professor on that aspect of it.

Madam Chairman: Any other questions to Ms. Morrison at this time? I had a couple. Are you suggesting that the cost of donor sperm in all circumstances should be paid for by OHIP?

Ms. Morrison: That is our recommendation, that they change the schedule of benefits so that the cost of donor sperm would be an insured cost.

Madam Chairman: Are you not concerned that while this case may warrant the cost of the donor sperm being paid for for a number of reasons—one is that if they do have a child with a similar disease—it may actually be more costly to society in the long run for them to have a child that would be diseased than to incur the cost of the sperm, and also because they have a higher probability than most people. On the merits, this case may warrant the cost of the sperm.

I guess my concern is that if I were married to a black-haired, brown-eyed husband and all of a sudden I chose that I wanted a blond-haired, blue-eyed child, I would be increasing my chances by going out and looking for sperm that would help me along with that. My concern is that there may be other reasons why people choose to have sperm donated other than by their spouse. It may be a reason, I guess, that would not be as meritorious as this one. I just wondered if you had broached that question at all.

Ms. Morrison: We did discuss that question when we were discussing this particular case. I think this case points up the situation in which it seems very clear that these people's best route, for them at least, is artificial insemination, and in our investigation I do not think we turned up information which would suggest that artificial insemination is something that people are going out and doing en masse and for no good reason.

I believe that most of the cases in which people seek artificial insemination are cases in which there is some kind of problem with their having a family in the usual way. We have not been given any figures to suggest there are thousands of people out there waiting to have blue-eyed children instead of brown-eyed children, and there is certainly no reason to think that. I think most of the cases in which artificial insemination is sought are certainly cases in which people have genuine problems with other ways of having children.

Madam Chairman: Could you give me any idea of what you think the cost of adoption would be? The emphasis on this is that artificial insemination may cost about \$1,000 to have a successful process. Adoption, although there is indeed a much longer wait, potentially, may very well be the

same cost through home service and the different studies that one has to go through. I wonder if in fact the alternative ways of having children are equally as expensive.

Ms. Morrison: It is quite possible that adoption costs as much. Unfortunately, as most people who have tried to adopt will know, there are just not children available to adopt. The lists are very long; the waits are very long. There are children available who are older children or children who for one reason or another are not as attractive as adoptees, but it seems clear from our information that there are long waits for adoption and that was not, for this family at least, a viable alternative.

Mr. Henderson: Along the same lines—in fact, I thought of much the same example as the one the chairman raised—would the Ombudsman be comfortable with the idea that the cost of donor sperm be an insured benefit where there was a medical indication for doing artificial insemination?

Ms. Morrison: Yes, we would be satisfied with that.

Mr. Campbell: Following up on that, you said in your initial comments that floodgates would not open. In this case, genetic counselling had taken place with this couple. They realized they had the recessive genes, Mendel's laws being as they are. I suspect, though, that what I seem to hear you talking about is where genetic counselling had taken place.

Ms. Morrison: That will often be the case, yes.

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Mr. Campbell: Are you saying, though, that you are asking for all insured services or where genetic counselling had taken place?

Ms. Morrison: I believe there may be some circumstances where there may be reasons other than genetic counselling; i.e., there may be an impossibility of the couple having a child together, an infertility problem, and artificial insemination might be chosen in those circumstances as well.

Mr. Campbell: Rather than in vitro?

Ms. Morrison: Yes. In vitro is really only possible where you have perhaps a fertility problem but not a complete inability.

Mr. Campbell: As my second and last question then, the genetic counselling service is an insured service, I understand. Is it?

Mr. LeNeveu: It would be, yes.

Mr. Campbell: So you could link those two things together, having genetic counselling showing that there is a medical need, and therefore allowing the result to happen.

Ms. Morrison: Yes, you could do that. The problem would be that might not cover all the needy cases.

Mr. Campbell: But it would cover the cases that are medically necessary.

Ms. Morrison: Infertility might be a medical necessity as well.

Mr. Tatham: I will defer to my friend to my right. I think she is going to ask the question I was going to ask. Better she ask it than I ask it.

Mrs. LeBourdais: I do not know if it is better that I ask it, but I will ask it as part of what I want to address.

I am surprised that you say you do not feel this will open the floodgates. Not that I am implying that would necessarily be bad, but perhaps 10 years ago we would not even have been here discussing such subject matter, because it was not possible.

With the whole area of genetic engineering advancing as quickly as possible, with society coming to accept that whole area of things, perhaps in a different way, slowly but progressively, would this not also be applicable—and again, the medical people in the room might be able to say, "No, you're wrong in that area"—for instance, with Down syndrome? If you had one Down syndrome child already and you wished to have another child, with the chances of that happening again because of the contribution of the XY chromosome from one and only the one choice from the female, would that not be a perfect example of where you might want to look elsewhere for a donor sperm?

Another example perhaps would be—and Mr. Tatham brought this up—for those people who choose not to marry but who would like to have a child. Would this not be another situation? Going to the most extreme case, if you read the Sunday Star, apparently there is a possibility that men can carry a child to term. Another 10 years for that one.

Madam Chairman: My goodness.

Mrs. LeBourdais: My point is, because of that whole field opening up to the extreme, and getting back to the realm of the more possible, specifically the Down syndrome and women who might choose to have a child but not marry, would this not open up whole other areas to be explored? As I say, I am not saying that would be bad.

Ms. Morrison: With respect to the Down syndrome question, my knowledge of Down syndrome is a little hazy. I know it sometimes arises when it is not necessarily this kind of genetic problem. But if it were this kind of genetic problem, then that would be an ideal case where this same reasoning would apply.

Mrs. LeBourdais: Because that is fairly common.

Ms. Morrison: That is certainly the kind of thing that I would think should be prevented by this kind of procedure, if this procedure is available, and therefore it should be paid for.

If there is a concern about its being used for purposes that are not, as someone has said, medically necessary or not situations like Down syndrome or Mrs. J's situation or infertility in a married couple, then it could be tied to particular circumstances. The payment could be under certain circumstances. In formulating our conclusions and recommendations, I think the Ombudsman felt that most of the circumstances in which artificial insemination would be used would be deserving cases.

Mrs. LeBourdais: I think too, though, it could be argued that perhaps in the case of a woman wanting to have a child, it would be deemed medically necessary because there is no alternative at that point. I just

suggest that it does open up a wide realm of possibilities for that sort of thing.

Ms. Bryden: Under the Ontario health insurance plan, I believe in the case of prescription of drugs, if the doctor wants to prescribe something that is not in the formulary for people who are under the drug plan, he has to make out a form justifying why he wants that particular drug to be part of the drugs available to people under the plan.

Could this procedure not also be applied to processes, shall we say, that if a couple wishes to use this process and makes a case to the doctor as to why—and certainly I think the case before us seems like a very strong case that should be supported—can the doctor not then recommend to the ministry that this particular process for this particular couple be considered an insurable benefit? It would have to be done on a one-to-one basis, with the doctor filling out the form.

I think you would have to have some sort of appeal in case you feel an unsympathetic doctor is not au courant about the particular difficulties that some people would bring forward as to why they do need the procedure. If you had those two safeguards, could it not be done simply by requiring a medical certificate to OHIP, asking that this become an insured benefit in each case?

Ms. Morrison: This was in fact one of the mechanisms that was suggested as a possible way of providing this as an insured benefit, in the same way that nonformulary drugs or oxygen are provided under an authorization, as you suggest. That is possible.

Ms. Bryden: Would that put a clamp, more or less, on any sort of floodgate of people applying for other reasons besides some of these very extreme genetic or medical problems that appear in this particular case?

Ms. Morrison: That seems possible.

Madam Chairman: I would suggest that we conclude at this point. We will open tomorrow with Mr. Bell asking Ms. Morrison any questions he may have, entertain any questions that might pop into committee members' minds this evening, then we will allow the ministry to make its presentation and proceed as normal.

For committee members, tomorrow we will be dealing with the remainder of this case. We have the Ministry of the Environment coming in with regard to whatever that company was.

Clerk of the Committee: C Ltd.

Madam Chairman: Then we will be dealing with any other outstanding matters that have come as a result of the annual report of the Ombudsman. See you tomorrow at 10 a.m.

The committee adjourned at 4:27 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

ORGANIZATION

OMBUDSMAN'S RECOMMENDATIONS DENIED

WEDNESDAY, AUGUST 10, 1988

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

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McLean, Allan K. (Simcoe East PC)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Daigeler, Hans (Nepean L) for Mr. Lupusella
LeBourdais, Linda (Etobicoke West L) for Mr. Carrothers
Tatham, Charlie (Oxford L) for Mr. MacDonald

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Morrison, Gail, Director, Investigations
Hill, Dr. Daniel G., Ombudsman

From the Ministry of Health:

LeNeveu, Ron, Assistant Deputy Minister, Corporate Administration

From the Ministry of the Environment:

Jackson, M. B. (Jim), Acting Director

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, August 10, 1988

The committee met at 10:10 a.m. in committee room 1.

ORGANIZATION

Madam Chairman: I call the meeting to order this morning. Before we start into the case of Mrs. J this morning, I would like direction from the committee.

We are setting our agenda for next Thursday, and as you will note, we were supposed to go to London that day. That was one of the four places we were to travel to for public hearings on expanded jurisdiction. Initially, we had three people from London who wanted to speak with us, one group with more than one person, so I had made the decision that we should go to London next Thursday, that it would be worth while for us to make this day trip.

In fact, now we are down to two individuals who are presenting on their own. We are talking about two individuals who will be presenting in London. I would like direction from the committee whether it would be more appropriate to bring them to Toronto and meet here, given the cost that will be incurred with the 13 of us travelling. Also, we would like it on the Hansard record if possible, given that these are public hearings and will provide input into our expanded jurisdiction hearings. Is the suggestion of bringing them to Toronto a better one?

Mr. Pollock: I think it would be. There would be no comparison in the cost. It would be far cheaper to bring those two people, if there are just two of them—

Madam Chairman: Yes, just two individuals.

Mr. Pollock: —than to transport the whole committee to London. There is no question about it in my mind. I think it would work out better all the way around and it would be on Hansard.

Madam Chairman: Is anybody opposed to bringing these two individuals and changing our agenda?

Mr. Mackenzie: Has there been any consultation with them at all whether they are able to?

Madam Chairman: We will follow up on that. In the event one or both of them are unable to come to Toronto either that day or any other day we are having hearings in Toronto, then I will get back to you. I just think perhaps it would be unnecessary for us to travel there and back in one day.

OMBUDSMAN'S RECOMMENDATIONS DENIED
(continued)

Madam Chairman: We are continuing, under tab 2, with the case of Mrs. J. The Office of the Ombudsman made its presentation yesterday. I believe Mr. Bell has some questions. He is on the list from last night. Then we will entertain any other questions and press ahead with the ministry's response.

Mr. Bell: Ms. Morrison, you mentioned yesterday a survey that your office took with respect to the varying costs associated with donor sperm. Without anticipating what explanation and description we are going to receive from the ministry respecting the whole issue of donor sperm, both in the hospital setting and in a private clinic setting, I take it that any inclusion of the cost of donor sperm in the schedule of benefits contemplated by your recommendation would of necessity include some form of controls or criteria with respect to the source of that donor sperm.

I do not want to trivialize the very sensitive topic by examples. I am not yet fully aware of what, if any, controls exist, but I understand they are not extensive in nature. Let us take, for example, the sperm available in a sperm bank in a hospital. You would have no difficulty if the Ontario health insurance plan exercised control over that, both in terms of the amount that could be paid to a donor and the amount to be charged to the recipient. Is that correct?

Ms. Morrison: That is right.

Mr. Bell: Would the same apply in a clinical setting?

Ms. Morrison: It is my understanding that in the whole field of health there are a number of safeguards as to the source of various kinds of things that are used in health care. I do not think we are suggesting this should be any different from any other kind of benefit that is provided under the health care system. There are certain safeguards as to where one can buy drugs, as to where one gets what are considered to be appropriate medical appliances and so on.

It seems to me that if anyone is able to answer that question in terms of the technical ability of the ministry to control both quality and costs, the ministry is best able to provide that information. We did do a survey of cost for our own interest, but we were working at a bit of a disadvantage as the people who are likely to know most about this are ministry people or people who have done work in the area.

Mr. Bell: I guess what I am getting at is to know from you, does or does not your recommendation say, "If the cost in location A is \$50, pay it; if the cost in location B is \$1,200, pay it"? Are you recommending an inconsistent fee schedule in terms of the costs to be paid?

Ms. Morrison: No, I do not think that is necessarily the case. It could be provided for in the way some benefits are, but say OHIP will pay up to a certain amount for the product.

Mr. Bell: Is that what is behind the recommendation?

Ms. Morrison: Our recommendation is that it be paid for.

Mr. Bell: But we know from facts, because you have told us, that there is quite a range.

Ms. Morrison: That is right.

Mr. Bell: Are you saying, "Whatever the range, pay it"?

Ms. Morrison: No, I think we are saying whatever the way of dealing with that range would probably be satisfactory to us. We have not set out a particular way of implementing this recommendation. A couple of questions from the MPPs yesterday suggested a couple of ways it might be implemented. One was through hospitals waiving the fee; another was through addition to the nonformulary drug schedule. Those kinds of ways of doing it would imply different things for the question you are posing. I believe the ministry is probably in the best position to tell you of the various kinds of ways it can implement such a recommendation and what that would mean the cost of donor sperm.

Mr. Bell: The material references a particular cost in this case of \$250 per cycle. Do you know what that cost represents and where that money would go?

Ms. Morrison: That cost was taken from the information which was provided to the complainant before she came to our office. She was provided with information, which may or may not be in your binder, in which she was told, I think, or one of the letters said, that the cost of this would be about \$250 a cycle for four to six cycles.

Mr. Bell: Without specific identity, who told—

Ms. Morrison: It is in your materials on page 5.

Mr. Bell: I am looking at something on page 8 which talks about \$250.

Ms. Morrison: Page 5 has a memo, "To Whom It May Concern," from a specialist in obstetrics and gynaecology whose name has been removed. It says: "This patient has requested artificial insemination by donor, the cost for which will be \$250 per cycle, being the cost of the semen samples. She will probably need between four and six cycles in order to achieve a pregnancy, if she does at all."

Mr. Bell: Do you know what that cost represents and where the money is going?

Ms. Morrison: No, I am sorry; I do not.

Mr. Bell: Does it make any difference to you?

Ms. Morrison: That would be the cost to this complainant.

Mr. Bell: What if the money is going solely to the specialist?

Ms. Morrison: I would be surprised if that were the case, but as far as she is concerned, this is the cost of artificial insemination from the medical profession. If you go and have a consultation with your doctor and he says, "That will be \$900 for my having examined your small finger," OHIP does

not cover that, but it has rules which prevent that kind of thing. Surely the same kinds of rules could be set up in this circumstance.

1020

Mr. Bell: Well now, I think you have answered it. It makes no difference whether that is a cost or that is an amount that would go to the doctor solely without any expense on his part, or if that is a cost that he requires to reimburse somebody for the cost of the donor sperm.

Ms. Morrison: No. We assume that some of it would in fact be a cost.

Mr. Bell: I would like to return to page 21. This is the last area I am concerned with. Back to that third to last paragraph we looked at before. That is the specific reason or the specific grounds, if you will, in support of the conclusion as for unreasonableness.

As I understand the reasoning here, it is that the procedure, i.e. artificial insemination, is an insured service. Therefore, sperm from whatever source is part of the procedure, and therefore, it should be covered by the Ministry of Health under the plan. Can you assist us with any other comparable examples where fluids or matters that are received by an individual during the course of a procedure are covered by the plan?

Ms. Morrison: Yes; oxygen which is in addition to the nonformulary drug list. It is covered under that, as authorized by a physician, as I understand it.

Mr. Bell: How about a cast? One breaks a leg.

Ms. Morrison: I think that is covered under the hospital's budget. You see, the problem is that lots of things are provided to people in hospitals. If you have something go wrong with you in the hospital and you have a particular procedure carried out, then the hospital's global budget, as I understand it—I guess ministry officials could probably provide you with better information—covers whatever you need to put it right. I do not think that is necessarily perfectly analogous to this.

The one thing I would note is that in vitro fertilization is covered. That is a process that is very much more complex, involving laboratory work and all kinds of equipment.

Mr. Bell: Let's be precise. If this procedure with this family was—I misdescribed it the other day—in vitro fertilization, which is conception outside the womb, and if the donor sperm were other than the spouse's, are you saying the whole thing would be covered?

Ms. Morrison: No. I understand that even in an in vitro situation the donor sperm would still be charged.

Mr. Bell: So it is not different. It is the same really. The principle of their not paying for it is the same.

Ms. Morrison: That is right.

Mr. Bell: Can you think of any other examples?

Ms. Morrison: We have looked and we have not found any other examples. The ministry might be able to help you.

Mr. Bell: Absent the facts of this case, why should donor sperm be covered? It is the substance, if you will, that is an integral part of the procedure. Nobody will doubt that, but absent the facts of this case, why should it be part of the schedule?

Ms. Morrison: I think it is difficult to completely say, "absent the facts of this case." This case is a particularly, perhaps, convincing demonstration of why it might be necessary to cover the costs. But many, many of the circumstances in which people will need to pay for donor sperm will be circumstances like this.

We are not talking about cosmetic surgery. We are talking about situations in which it is medically necessary for artificial insemination to take place. The medically necessary part is already involved in being insured for the service; that is, you cannot get the procedure paid for by the Ontario health insurance plan if it is not medically necessary.

I think we are talking here about cases that may not be as convincing as this in all of their details, but are more or less going to be cases like this, a case in which it is medically necessary to have artificial insemination and in which the people perhaps cannot afford to have that procedure if the \$25 for the procedure is paid but the \$250 for the sperm is not.

Mr. Bell: If I could try to put words in Dr. Hill's mouth through you then, and I know you will not let me if they are not the right words, what this report's conclusion and recommendation really say is that when you have regard for the potential circumstances of persons wanting this type of procedure, and when you have specific reference to this case as an example, in the Ombudsman's opinion, as a matter of social policy, it is unreasonable for OHIP not to pay for the donor's sperm.

Ms. Morrison: We would agree with those words in our mouth.

Mr. Mackenzie: I am not sure if this is so much a question as a comment, once again, on the procedures we went through yesterday. It seems to me the case before us is relatively simple. What might be of more long-term value at least is whether there should be any kind of recommendation. I think yesterday we referred to the fact that blood banks are there and blood is not a cost. If this is a growing procedure, and it appears to be, although I do not think it is one that is ever going to be similar to blood, we should be possibly making some recommendation in terms of some form of voluntary and controlled sperm banks that are not a cost, other than the mechanics of them. I do not know whether that can be part of, if we should so decide, a recommendation or not.

Madam Chairman: Perhaps we can explore that with the ministry when it discusses it in just a few minutes, because I am not sure why they have to pay for it now.

Mr. Elliot: In the recommendation from the Ombudsman that appears in the synopsis, I think in the follow-up documentation, the medically necessary part of what you have been talking about just most recently is not mentioned

at all. Is that a significant part of your consideration or do you want it more wide open, as the recommendation now stands?

Ms. Morrison: It is my understanding, and again this is perhaps subject to correction by the ministry, that in order to qualify for the procedure to be paid it must be medically necessary. Now, the procedure is already covered so it appears to me that in saying once you can have the procedure the sperm should be paid for, you are really importing that condition without saying so.

Mr. Daigeler: I think you answered this in the last question, but for my own satisfaction I would like to know it again. In the last letter from Dr. Barkin, of July 27, I think he sums up the position of the ministry. It reads as follows, "The schedule of benefits lists fees covering the professional services of physicians but does not cover the cost of the drugs, pharmaceuticals and other biologicals used in treatment."

Are you saying then that generally the ministry should cover all drugs, pharmaceuticals and other biologicals?

Ms. Morrison: No.

Mr. Daigeler: Or are you saying that these drugs, pharmaceuticals and other biologicals should be covered in extraordinary circumstances, which may vary from case to case?

Ms. Morrison: We are saying that in the circumstance of artificial insemination, the semen used should be covered. That is all we are saying.

Mr. Daigeler: Why would that situation be so different from any other that I could visualize? For example, I know of a case in my own riding where a lady came to me; apparently breast pumps are not covered by OHIP.

Ms. Morrison: That is right.

1030

Mr. Daigeler: She brought that to your attention as well and I understand you are looking at that.

Ms. Morrison: Right.

Mr. Daigeler: Would that not be the same? What criterion are you applying to say that this should be covered but not something else which falls into the category of drugs, pharmaceuticals and other biologicals?

Ms. Morrison: The ministry's general answer that drugs, pharmaceuticals and other biologicals are not covered is a general response to our specific recommendation that this particular biological, I guess it is called, be covered. We have other complaints which relate to other things which may or may not be found by the Ombudsman to be unreasonably not covered by the ministry. We have not included all of our OHIP complaints in this particular report because we have not completed our investigation in the other areas.

It may be that another case will come forward to this committee, or at least to the ministry, in which the Ombudsman finds some other drug, pharmaceutical or other biological which he feels it is unreasonable not to

cover in the context of the procedure being covered. But this case is confined to the facts of this case, or these kinds of cases.

Mr. Daigeler: What would be the key factor under which you are saying that this is so special? Why are you saying the semen should be covered?

Ms. Morrison: I believe we are saying that this should be covered because it is unreasonable not to cover it in circumstances like this one, and many circumstances in which artificial insemination is required will be this kind of circumstance.

Mr. Daigeler: You are referring to the social conditions.

Ms. Morrison: Once the procedure is covered, the procedure is useless without the biological. It appears to the Ombudsman that it is unreasonable in circumstances like this for the patient, like Mrs. J, not to be able to take advantage of the procedure because she cannot afford the biological.

Ms. Bryden: It seems to me we are back to trying to define what is unreasonable. This is not a charter case, because the refusal is not one of the things the charter would prohibit.

The Ombudsman's recommendation that the cost of donor sperm, as part of the artificial insemination procedure, be covered as a benefit is very broad. It may cover all sorts of cases that are not similar to the present case, so I think the committee is probably wrestling with the idea of providing some means of limiting the covering of sperm to certain cases. I think what we are looking for really is a route to decide who should get it and who should not, because I think it is a fairly widespread procedure used for a variety of reasons.

Yesterday, I mentioned the idea of using the physician approval form, similar to the one used when a physician insists that a drug that is not in the Drug Benefit Formulary should be approved as a benefit for the patient. Are there any other ways or routes that we can somehow specify that not only must it be medically necessary but also that there is no other adequate course?

Perhaps we should look at the comparison with the in vitro, where there may not be any sperm involved except the husband's but the in vitro is trying to help a childless couple become fertile, which I think society generally considers an acceptable desire. This is also trying to help a childless couple who have genes or inherited problems that may make it impossible for them to become fertile, or at least to become parents, without great risk.

How can we perhaps limit the breadth of the recommendation to cover mainly cases where there are great difficulties in becoming pregnant and having normal children?

Ms. Morrison: I think your suggestion about the authorization form is one possible way of doing that. I think there are other ways of doing it, as are done in other parts of the OHIP schedule or in controlling other kinds of medical procedures.

I think the controls that are already in place to control the payment for the procedure may already respond to your concerns; that is, the procedure is already covered, and it is covered because the doctor does it and submits the bill to OHIP. It may already be that the safeguards that you are seeking

are built into that, because he cannot submit that bill to OHIP unless the procedure is covered and, as I understand it, unless it is medically necessary.

For many of the things doctors do, we rely on their ethical consideration and their judgement that whatever it is they are doing which is going to be paid by OHIP is a necessary and good thing to do. I think those safeguards are already built into the coverage for the procedure; it is just that the sperm is not paid for.

Ms. Bryden: But they are not formalized in any regulation or instructions to doctors.

Ms. Morrison: No, and one way of formalizing it would be to do as you say. In cases of nonformulary drugs, doctors have to sign a form saying they think this ought to be prescribed for this patient because they do not want the one that is on the formulary. Perhaps that is safeguard enough.

Mr. McLean: You are asking the ministry to reconsider including in the schedule of benefits the cost of donor sperm as part of the artificial insemination procedure currently covered under the schedule of benefits. Do you have any evidence to indicate to you that they have at one time considered including it as a benefit? You are saying to reconsider. Have you any evidence that they have at one time considered it?

Ms. Morrison: No, I think our verb there is used advisedly. We have been to this committee before on the wording of our recommendations and it has been found in other areas that we cannot recommend that a ministry amend legislation. We can recommend that they can reconsider with a view to amending. That is why the wording of this particular recommendation is as it is.

Mr. Pollock: Do you see this in any way as a step down the road to OHIP paying for surrogate mothers and that sort of thing?

Ms. Morrison: I do not, no.

Mr. Pollock: You do not see that as a step down the road to that at all.

Ms. Morrison: No.

Mr. Daigeler: I must say I am still not too clear, or perhaps not too convinced. You are saying, when I read the recommendation from Dr. Hill, sperm should be covered because it is part of the procedure. I think that is your main reason, but if you are arguing that sperm is part of the procedure, what would preclude any other kind of biological, pharmaceutical or drug being identified as a necessary part of a medical procedure?

In other words, are you not really asking for a change in the present global policy of the ministry? In other words also, if this is adopted, would somebody not have a very good case for saying: "You are already paying in this case for a biological. Therefore, you should also pay for the other."

Ms. Morrison: They might have. We are not suggesting a global change.

Mr. Daigeler: But is that not the implication?

Ms. Morrison: We are suggesting that in this particular instance it

appeared to the Ombudsman that it is unreasonable that this particular biological was not covered in this particular procedure. Like all arguments from the specific to the general, there has to be a stopping place; that seems to me to be the very essence of a decision about reasonability.

It may be not reasonable in this case and quite reasonable in some other kind of case for the person to provide his own X, whatever it is. We have not looked at all of the possible things that OHIP does that are called procedures in which biologicals, pharmaceuticals, appliances or whatever are used. In fact, we do not see this as opening the floodgates to absolutely everything being adopted, because our recommendation is confined to this particular circumstance. You say I have not been clear. Perhaps I just have not convinced you. There may just be a difference of opinion.

1040

Madam Chairman: I would like to press ahead with the ministry's position on this, if there are no questions at this point, and then we will have an opportunity for more questions later. Would you like to make some kind of remarks?

Mr. LeNeveu: Yes, if I might; I would like to cover a series of points. I would like to perhaps suggest a sequence in which the ministry might make some opening remarks that would be helpful to the committee, flowing from yesterday's conversation.

First, I think it would be useful, from today's discussion, to distinguish between funding mechanisms and policies.

Oxygen, as an insured benefit, is provided under the drug benefit plan. It is not provided through OHIP. The assistive devices program, which has been staged by the government and introduced, has also been a separate program from OHIP. As the members recall, the programs were initially put into place for those under 21 and there have been announcements that the program will be extended to the total population for such things as wheelchairs and assistive devices which, again, in a sense interlink many times with the provision of medical services. But the mechanism of reimbursement and the policy parameters are different.

More closely related to this, the word "biological" was used this morning and, I guess, in a sense it is a biological like blood, but it is not an artificial biological. I think the analogy perhaps between blood and sperm is a closer analogy. There has also been the discussion of the question of medical necessity. Blood obviously becomes medically necessary in terms of a number of surgical procedures and so forth. Sperm, in turn, also is a medical necessity in the act of fertilization, but I think there can be a distinction in that area as well.

I would like, in the sense of this issue, to ask if it would be the committee's wish to first have Gilbert Sharpe talk about the Human Tissue Gift Act and the connotation of that legislation that human tissue is a gift. That dwells on the question of payment and the major differences in policies in Canada, where blood is a gift, as distinct from the United States, where there is a payment-donor system; a fundamental matter of public policy in Canada versus the United States. I think that legislation has relevance. Also, Mr. Sharpe points out to me that the Uniform Law Conference of Canada, on consistency in provincial policies on law, is meeting at the very moment in Toronto, dealing with the issues surrounding this particular topic.

Also, I think it would be relevant and helpful to the committee, and I am sure the committee members are aware of this, to touch a little bit on the Law Reform Commission's report on the whole very vast and complex issue of human artificial reproduction, which is now being studied. It was tabled by the Attorney General, I believe, in 1985, but is now the subject of a very complex internal study within the government through an intraprovincial committee on new reproductive technologies. If it would be the committee's wish, we have with us this morning Jessica Hill from our ministry who could give you some sense of the work of the interministerial committee and the issues it is facing, one of which is this very area.

In setting this forward, I am trying to set out the legal issues in existing law. The work which is going on from the Law Reform Commission, which is going to be considered in policy terms, I believe, is the hope that the government will have reports from internal working groups into early next year.

That, then, would flow usefully to a discussion on the medical implications of this, and I asked yesterday whether Dr. John Proud could answer some of your questions from a medical perspective. Dr. Proud is very qualified to do this. He is an obstetrician and gynaecologist by medical training. As well, this is his area of personal expertise.

Madam Chairman: May I interrupt you for just a moment, Mr. LeNeveu? There is a only problem I am having at this point, and I may throw it out to the committee. I am looking at your letter, the response of the Ministry of Health of March 3, 1987. It is page 11 of our material. This is one of the initial responses by the ministry to the Ombudsman's office regarding the case of Mrs. J.

As I look over that and subsequent material, I do not see any reference to the policy, to the Human Tissue Gift Act or to any of the basics as arguments of why you do not cover insemination and the procedures.

While it might be interesting, and I think this is a very fulsome response that you are outlining here, again I have to impress upon you the concern of the committee that had such a fulsome response been made on March 3, 1987, to the standing committee on the Ombudsman, perhaps we would not all be sitting around here today discussing this issue. Had they understood more fully the basis of your decision and not the brief letter which I do see from Dr. Allan Dyer to the Ombudsman, then perhaps we would not be all here today.

Again, I must caution you about the new information. I will allow you to continue with your outline and direct the committee, but I do have concerns that in a number of things you have raised, at least from my review of the material that is before us, there is no reference to any of these particulars. I think I would caution you that this type of full response perhaps would have been more appropriate 16 months ago.

Mr. LeNeveu: I have become progressively more sensitive to this issue. I think, however, and we raised the question yesterday, there are questions of information of law and legal existing statutes. I am not sure what the rules of this committee are.

But obviously, if there is a Human Tissue Gift Act, what it does or does not say may be of interest to the members. But it is a law in this province. It may be of interest to lay members whether a lawyer or the Ombudsman is going to describe for the benefit of the committee the nuances of that legislation. I certainly would not feel comfortable doing it. I would ask

whether Gilbert Sharpe could do it. But I think it would be helpful in understanding the issues around this particular matter, particularly in terms of the method of payment.

Madam Chairman: If I can just go back on that point. I see a few committee members wanting to jump in on this. Yes, it is an issue, but if you are basing your response on the Human Tissue Gift Act or any other act as the basis for why you are unable to prescribe, all I see here is that it is not on the drug schedule or any of the formulae and that is why you do not pay for it. We have not seen any of these other ancillary arguments as a basis for your discussion.

Mr. LeNeveu: No. I appreciate that.

Madam Chairman: The problem we have is, again, had you maybe been this complete many, many months ago, we may not all be here today. That is an end. I just wonder if you are jeopardizing the Ombudsman's position by bringing it forward today, as much as we would like to be informed.

I am curious to see whether we pay for different things. I think we all are. The caution is that, as far as we can see from the answers they have given us, they have not been informed of this before.

Mr. Elliot: The committee may very well see fit to hear all of this presentation a little bit later on, but I would like to indicate where I am at right now. My preference is that we do not hear this new information because right now my decision is resting on your definition of what "medical necessity" is.

I would like you to address what is in the booklet as background material for us, as a start here anyway, and give us a chance to question you on the concerns we have to this point, because the Ombudsman's presentation has been fairly complete and the time line on this is always based on what is in the booklet.

1050

Mr. LeNeveu: That is correct.

Mr. Elliot: It is not this kind of briefing that you are suggesting. My interpretation of this is that it is new information. While it would be very interesting, I do not think it is appropriate, based on other situations that are similar.

Mr. LeNeveu: In conclusion to what I was intending to say as an opening matter, the work that is going on in the committee right now is dealing with the question of semen and the protection of the public in an evolving situation of growing knowledge from a public health perspective. The major concern from the public health point of view is the question of acquired immune deficiency syndrome, and the knowledge even two or three years ago is quite different from the knowledge today.

The committee will be looking internally at the standards, because the medical profession itself has been changing its recommendations to now whether frozen semen should be used, and there should be up to a nine-month waiting period, a retesting of the donor, whether he is anonymous or otherwise, on several occasions because of the high-risk potential in that area.

I agree with the remark made by Ms. Bryden that when those issues are

resolved, there are going to be questions of standards to be defined. Then the question of public financing will come up. It is the ministry's internal preliminary thinking, recognizing that other issues have to be addressed in terms of public policy first, that a mechanism would have to be developed, and I think there was some discussion this morning in terms of Mr. Bell's question about the mechanism.

Probably the mechanisms would be developed within the Ministry of Health, and we anticipate that over the next year this question will be addressed again, once the public health issues have been put into place. But the mechanisms would involve the establishment of a facility with standards and protocols surrounding donor semen.

Once those are in place, if the policy changed in terms of future direction—it is not an insured benefit at this time, but it would likely be funded in a similar fashion to blood and hospitals. Right now, blood is available to the public hospital system from the Red Cross. The government of Ontario pays the Red Cross its costs of collection, in terms not of the donor but of the cost of the nurses, the facilities, the treatment plants and all that sort of thing. In turn, the Red Cross distributes the blood supplies to the hospitals nationally as required, and the governments individually provide money to the hospitals. Nationally, there is a mechanism for funding the Red Cross by all 10 provinces.

That is the direction in which we would be moving in that sense. so ultimately, to use the earlier words, the human tissue would be funded in one mechanism, and the medical act of insertion, which is now an insured benefit, would continue.

Ms. Morrison: I cannot tell you, Madam Chairman, how untenable we feel our position is in this kind of circumstance. We do not wish the committee to make decisions based on bad information. We are also not unreasonable when ministries give us information during the investigation.

None of the stuff that you are being given this morning is information which was not available last week, last month or six months ago. We are now in a position where if we argue with you, "Please do not listen to all of this information because we weren't provided with it," you quite rightly could say, "How can we make this decision without the information?"

On the other hand, if this is the way the process goes, if the ministries can absolutely ignore us until they get to this committee, the whole concept goes down the tube. In some ways, we are insulted by the fact that the ministry finds it necessary to bring this information forward to you, but we somehow do not matter enough to bother providing it to us.

I feel very strongly that our whole way of dealing, with this ministry particularly—this ministry has been in front of this committee many times. We wrote to them very specifically, a month ago, two months ago, some time ago, saying, "If you don't provide us with this information, the committee will not hear it." We did that on the committee's instruction, and now I feel very much as if we have been boxed by this whole process. We are in an untenable situation, I feel.

Mr. LeNeveu: The ministry would like to apologize to the Ombudsman.

Mr. Bell: Before you apologize, let me give it some more context. I think Ms. Morrison has put the issue quite squarely. I have been debating

internally for the last five minutes what the heck to do with this case, because on the one hand the committee has a very firm rule, and I think if we got technical, the Ministry of Health is fixed with the knowledge of that rule.

The rule that is when the Ombudsman process is undertaken and you are asked to respond to these things or are answering a recommendation or a request, you do it in an extremely fulsome way, so that the Ombudsman, when he comes to the stage where he has to make the decision, "Do I go to the Legislature?" has all the information before him.

The anomaly is that Mr. LeNeveu, perhaps with the exception of Workers' Compensation Board representatives, has appeared before this committee more than any other senior government official. I can tell you that Mr. LeNeveu comes very well prepared, having made a very fulsome response in all circumstances, and has been most helpful to the committee in the process. That exercise, Mr. LeNeveu, is not happening today.

The other thing is that I do not see either Mr. LeNeveu's name or Mr. Sharpe's name on any of the material, and so any comments that are made are not intended to, and I do not think do, apply to either Mr. LeNeveu or Mr. Sharpe.

This committee has a problem. On the one hand, if you want to call a spade a shovel, the Ministry of Health has not said anything about why this is not on there. You have a double-edged problem. The Ministry of Health has a duty to the public, through this committee, to say why and, frankly, members of the committee, you have a duty to the public to listen. Can we get to the issue of why there has not been a fulsome exchange in this case? That may help us get to the final decision, what we do with the nature and extent of information that you want to give us.

Mr. LeNeveu: I think it is fair to state, Mr. Bell, that I have appeared before the committee, and the Ministry of Health is aware of the desirability of providing much information both to the Ombudsman and to the committee as to its rationale. I personally accept that point, as spokesperson for the Ministry of Health and as an individual.

The dilemma we were faced with, quite frankly, and this matter was being discussed internally within the ministry—this is probably not an acceptable apology, but we do owe you an apology—was we were not aware that the committee was going to be sitting this summer, and all of a sudden we were requested to appear on both cases, this one being extremely complex. We had anticipated that we would be expected to report, and probably would appear in the fall, on this particular case. That is not an acceptable apology to the committee. You are here today and you expect to receive fulsome documentation.

We debated last evening how we should handle today, because we recognized the sensitivity of the issue. We have known in the past—I personally at least have known in the past—that this is the desire of the committee. We were faced yesterday, and that is why I asked the question yesterday when the question came up as to how the donor system works in Canada today, with whether it would be appropriate for us to answer that question. If it was the desire of the committee, we would ask Dr. John Proud to speak to the committee.

In discussion yesterday evening of the ancillary issues and the Human Tissue Gift Act, that is a complexity I am not sure how we would deal with. I guess I would make also a distinction—and this does not pertain to this case.

I can see personally—I am speaking personally now—the problem, first of all, that a question may come up which did not arise during an investigation, a point of information. Whether or not, therefore, the question should be answered I think obviously would be the committee's decision.

Also, I think sometimes it is useful—a personal observation, and it came up yesterday in connection with the travel grant program—to touch on roots and antecedents, because it is helpful. The point came out yesterday about the travel being north-south, whereas in fact the program has a significant element of north-north, which is the ultimate desire in public policy terms of developing the program.

But today there is no question that we are introducing a series of points which we had intended to deliver to the Ombudsman and, ultimately, if it was the Ombudsman's decision that it should come before this committee, we would have been in a position to discuss them more fully. I do apologize.

1100

Madam Chairman: Before I go to Mr. Tatham, can I just draw the committee's attention to page 18 of the material? Just for those who are not regular committee members, that is where the 22(3) letter of the Ombudsman is found. It starts at page 16, but practically the whole of page 18 is devoted to explaining our policy of it being part of the record. That letter is dated July 8, for those who want to know the basis.

Mr. Tatham: I am brand-new here and I do not know very much about this, but how do we make a decision unless we get the information and how is it going to be fair to the Ombudsman? Shame on the Health people. I think that somewhere along the line they should get together and make a deal with the Ombudsman and figure the thing out. How do we sit here without the information to make the decision? Is it procedure to send them back to talk it over or figure it out? I cannot make a decision based upon what I am hearing so far.

Mr. Bell: May I try to answer that? There is an analogy to the courts. Courts are very specific about the parties exchanging fulsomely all their information, etc., before a trial starts. Invariably situations arise where the one party tries to come forward with new information at the trial, not previously disclosed. The courts, where they recognize that evidence is substantive, will generally let it in under conditions, and those conditions are usually penal to the other side.

That is where the analogy breaks down here, because I am not sure this committee wants to get into the exercise of considering how to penalize the Ministry of Health. One of the ways of penalizing the Ministry of Health, or any ministry in this situation, is to say, "I'm not going to hear any more from you: recommendation implemented." It is not that easy. You have a duty to the public, and this is an extremely complex social issue that cannot and should not, in my opinion, be dealt with that way.

One of the the other ways the courts do it—and you have just alluded to it—is that when something new comes forward, the court says to both of them, "Get yourself in a room and talk about it very fulsomely and then come back and tell me whether or not you still want to try this case."

That might be something you want to consider. In other words, give the Ombudsman every and full opportunity of knowing what the heck this is, every and full opportunity to consider what, if anything, he wants to do about it

and every and full opportunity to consider whether anything additional should be said and then come back.

I think what is a given is that this committee will be making some comments about the problem in its next report and, hopefully, it will get wider circulation than it had previously.

I have very great difficulty, I do not mind saying, members of the committee, notwithstanding your policy, which I fully supported and encouraged you to adopt. But we are not dealing with the cost of a heat lamp here; we are dealing with something obviously more important.

There are two suggestions. One is to lock them in a room and tell them to come back when they want to tell us something and the other is to let certain specifically defined information in, only on very specific conditions, some of which might be penal in nature, for want of a better word.

Mr. Daigeler: Could I first try to summarize what I think I heard the Ministry of Health saying and then ask the representatives of the Ombudsman a question?

I think I heard you say that you feel the procedure should not be covered under OHIP for the reasons spelled out in the letters we have in front of us. However, you are quite inclined to cover that, not under OHIP but under another program which would fall into the context of the Human Tissue Gift Act or whatever.

My question to the representative of the Ombudsman's office then is, would that satisfy your concern or do you insist on OHIP payment, over against payment under any other kind of government program?

Mr. McLean: On a point of order, Madam Chairman: Are we going to clarify whether we are going to continue with this case or are you going to allow questions to continue and then decide afterwards? I think we were on the point of determining whether we were going to continue, and I see now that we are into asking questions again.

I would like a clarification. If we do not have the evidence, how can we continue? I would like our solicitor to indicate to me what we should be doing.

Madam Chairman: I have Dr. Hill and Mr. LeNeveu telling me that they want to speak to that matter right now.

Mr. Mackenzie: Before we do it, can I ask our counsel whether he missed one alternative in the two alternatives he gave us? That is that we do have the case that has gone through the regular procedures, all of the investigation. We have taken firm stands in the past, although you are suggesting there may be a way out now, that we do not allow new evidence, and there is the option of dealing with the case as it has been presented to us by the Ombudsman.

Mr. Bell: That is an option. I do not mind thinking out loud for you, and if it is the cost of a heat lamp, I have no problems whatsoever. That is an actual example that the committee wrestled with a number of years ago.

What is gnawing at me, on your behalf, is the making of a decision in the absence of very relevant information, material, etc., that is necessary to make an appropriate decision. You may very well come to the same decision, but

in so doing you may be alert to some necessary information that would require you to give direction or to do something else. My concern is not to get you down a very dark alley without an escape route.

Mr. Mackenzie: It seems to me that is obvious right off the bat. That is why I asked the earlier question. There has to be a procedure in terms of the banking and the cost.

Dr. Hill: I think our counsel has put very clearly that what is happening here is most inappropriate. In terms of the Ombudsman process, it severely damages our position. I think it is an inappropriate process.

I would ask for an adjournment. I would ask for a time to consider this matter carefully. Maybe a closed room would be a solution, but I certainly would not like us to proceed. We cannot proceed under current circumstances. Therefore, I would request an adjournment on this case.

Mr. LeNeveu: I appreciate Dr. Hill's remarks. This is a personal reflection only. In my closing comments, the ministry indicated that it would be reviewing its policy and giving serious consideration to the funding of this program, probably in 1989, when the public policy issues relating to the AIDS issue particularly are resolved. That indicates a direction of policy that will probably evolve next year, but the policy has not as yet been established.

Recognizing the dilemma that the ministry has created—and it is not an excuse; there was a shortness of time—the only other alternative I can think of to Dr. Hill's is that if the committee wishes to defer the matter, because you are in a series of hearings, we would be very pleased to summarize as expeditiously and as concisely as we can the general thrust of the points we were outlining today for the benefit of the Ombudsman. Obviously, then it would be the Ombudsman's decision and the committee's decision how to proceed.

We do apologize. We recognize we have caused a problem for the committee. Internally, we did not really know what to do. We were thinking within a very short time frame, since we were notified to appear at this committee within a couple of days, which we had not anticipated. But that is not acceptable to all of you and I apologize again.

1110

Madam Chairman: A few committee members have comments on this. Mr. Tatham, you had put up your hand.

Mr. Tatham: I feel, as you say, that this is not just a heat lamp. You are dealing with something that will be discussed for a long, long time by a lot of people. I think it is not just a matter of the Ombudsman and the Ministry of Health on this particular issue; it is the general manner in which the Ombudsman is being treated.

Someplace along the line, if we believe in the Ombudsman system, let's give it support and let the government departments understand that. So saying, I think we should adjourn this matter and let them get together, and I so move.

Mr. Elliot: I would also like to speak in favour of adjournment, because I think the Ombudsman's office is in an untenable position. In doing this, I would like to note that the initial complaint by the couple was dated September 3, 1986. Reading this, my information is that they are still waiting

for a judgement on this so they can proceed. While the time line has been very short just recently, there was a full year there in which a lot of activity could have taken place between the Ombudsman's office and the Ministry of Health.

If an adjournment is decided upon, I think it should be relatively short, taking into consideration that the purpose of this committee is to do what it can for individuals out there. To keep these people waiting very much longer is untenable as far as I am concerned, because there has been sufficient time to resolve this question between the Office of the Ombudsman and the Ministry of Health.

Mr. Bossy: I have a short comment. I have to agree that we, as committee members, really lack a tremendous amount of information from the ministry. As it was proceeding, we were being given that information at that time. I have to assume that you at no time discussed that same information with the Ombudsman's investigator, because you would have added that to your response. Really, it has put the Ombudsman in a very bad position, having brought the case to this committee. But you have also put the committee in a position where it cannot proceed on a case because of what has been stated this morning.

The Ombudsman could only go on the basis of the response you gave, with no explanation on an extremely serious case. If what you just said in your last remarks is what is really happening, why was that not included in your letter or in an explanation? The Ombudsman's office could then have evaluated better and may not have brought it to the committee. I say "may not have brought it," because I do not think it would have been necessary, if there was a truthful response from the ministry as to where it was in dealing with this very issue.

Right now, I myself find that in no way—I had that in my mind when I arrived here this morning, having sort of assessed what was going on—could we make a responsible decision here on the basis of what you have provided to the Ombudsman. I am afraid I would have to totally agree that it would be proper to adjourn this and take a second run at it, whatever we may decide on that.

Ms. Bryden: Mr. Bell gave us the choice of wanting the Ombudsman and the Ministry of Health to get together and exchange information more fully. That was one, and that would require an adjournment, I would think. He also said we could deal with the case as presented, but because it was a very sensitive case with far-reaching implications, it may be difficult to make an intelligent decision.

I am not sure I agree with that. I think there is a third alternative open to us; that is, that we consider the Ombudsman's recommendation that the cost of donor sperm be added to the list of benefits, but that we also follow the route we did with some cases yesterday and include a recommendation that the payment for donor sperm be set forth in a regulation of some sort which would specify the kinds of cases in which it would be authorized, possibly requiring also a physician's recommendation that it should be granted.

It would in some way make sure that people in similar circumstances to that of Mr. and Mrs. J would get the donor sperm without having to wait another goodness knows how long—another year or two—and that similar cases would also be governed by a regulation.

If the ministry wants to limit the use of this benefit, it had better

get a new regulation into effect pretty quickly. I think our recommendation would suggest that the ministry work out a proposal, but that in the meantime the donor sperm be available to Mr. and Mrs. J. I would like to ask Mr. Bell, is that not a third alternative for this committee to take?

Mr. Bell: Yes. It is certainly a third alternative. There are also other alternatives. I guess my real concern is trying to serve a number of masters. I am very concerned over the perception of respect or lack of respect for the Office of the Ombudsman. I am also very concerned about this committee making a decision that is not a fully informed decision. I am having trouble reconciling those two matters. At the appropriate time, I have a couple of ideas I would like to share with you here after others have had comments, which may be a combination of all of them, including your suggestion as well.

There is one thing missing in this process that is usual in the Ombudsman process. That is the consultation between the parties at a high level. It usually happens. For whatever reason, it did not happen in this case. I am kind of curious what would happen if that process were undertaken, which is one of the suggestions I have that I would like to share with you later.

Ms. Morrison: I would just like to suggest that there may be one alternative that would not prejudice this particular complainant, which as Mr. Elliot has noted is somewhat of a difficulty, the complainant having gone through the whole process of coming to our office and now being put off yet again.

It sounds, from what Mr. LeNeveu was saying, as if the ministry's initiatives are indeed developing in this area and that it may be some time before an appropriate general policy decision might be able to be made on this. It might be possible that for this complainant, some specific ex gratia payment or something along those lines could be recommended, while not recommending a change in the general policy and leaving the general policy to be discussed at a later date once the high-level discussions Mr. Bell has suggested should take place have occurred.

Mr. Mackenzie: I appreciated Mr. Bossy's remarks earlier. I think we have to acknowledge the request Dr. Hill has made. I am a little bit annoyed at what has happened here this morning.

My concern, as I think several have now outlined, is for the position the family is in and whether or not we can make some special arrangement here. I refer you to page 2 and the letter that has been retyped that came from the woman involved, listing her options: "adoption, which carries too long a wait"—we have left them two years on this now without the procedure going on; "monitored pregnancy and possible therapeutic abortion"; "nonmonitored pregnancy, which seems senseless."

1120

I guess that is my annoyance in this particular case. I think what has happened here is unfair and unreasonable and there should be a decision made very quickly for a meeting of the parties. I hope we can provide some redress for the delay we are occasioning, if we are not making a decision on the Ombudsman's case carried out with his usual investigation.

Madam Chairman: Let me make a suggestion as chairman. I have listened to everybody. We find this to be a very sensitive position. My

inclination would be to accept an adjournment on it, but in light of the comments that Ms. Morrison has just made, and particularly Mr. Mackenzie's, with regard to these particular individuals who have waited a great deal of time, and there is the potential this may not come before us again for a long time, I would like to make the suggestion that we adjourn now until two o'clock, giving the Ombudsman and the Ministry of Health an opportunity to have some discussions, which may provide a number of things.

We may find that nothing can be done, but some negotiation may be able to go on during that period on some solution to this matter, whether it be a solution as to the particular circumstances of this case or some agreement as to what material or information from the Ministry of Health can be presented that will provide us with enough information to make a decision in this case, without going beyond the problem of not providing information before and coming forward with new information now that will prejudice the Ombudsman.

If at two o'clock you come back and nothing has been resolved at that point, and the Ombudsman is dissatisfied with any solution that has been obtained during that time, I suggest we take the Ombudsman's recommendation, if it is to adjourn, and perhaps use some power we may have to issue an order requiring the production of the documentation that is being reviewed by the Ministry of Health in reference to this issue, so that we may be privy to some policy decisions that are going on internally with regard to this case. That suggestion would give them until two o'clock to perhaps come to some solution. Then we will be in a better position to make some kind of decision. Are there any objections to that?

Ms. Bryden: The question I was going to ask is, if we did go ahead with making a decision and then made a supplementary recommendation that there be some development of new regulations, we would certainly want the Ombudsman and the high-level meeting to be part of that process. I think we would have to make that clear in our supplementary recommendations so that it is one of the things before us.

I support the idea of an adjournment until two o'clock. It may be too short notice for the Ombudsman to find out about all these additional proposals. I think it is up to him to ask for a further adjournment at two o'clock, if he wishes.

Madam Chairman: I do not see any objections from the committee. I would like comments from Mr. Bell on this point. I think we are agreed on the process if the parties to this are agreed. I see them nodding their heads so I gather that a two-and-a-half hour recess might be in order.

Mr. Bell: For clarification, this committee does have the authority from the House to call for the production of all books, papers and records that may be relevant to the matter at hand. What the chairman is saying is that if at two o'clock the matter is not resolved and if this matter has to be rescheduled before it, this committee will be asked or will consider issuing an order to the Ministry of Health for the production of any and all documentation, wherever in its possession, power or control, relating to the matter of donor sperm as an insured benefit under the Ontario health insurance plan or any other plan that may be presently in existence or may be formulated in the future, and that production be made to the committee, and through the committee to the Ombudsman for his consideration before the matter is rescheduled for discussion before this committee and for consideration by the committee. Any further discussion of that should be deferred pending resumption at two o'clock.

Mr. Henderson: If at two o'clock there is agreement, does the committee still make up its mind about the recommendation of the Ombudsman, or do we take ourselves to be sort of excused from the issue at that point?

Madam Chairman: It depends what the agreement is. The agreement may only be that we will decide on this particular case and the statement of facts, which will be introduced by the Ministry of Health. We do not know what the agreement will be, but—

Mr. Henderson: If there is an agreement on this particular case, can we still address the general issue of the Ombudsman's recommendation, or are we out of the picture at that time?

Mr. Bell: Dr. Henderson, if at two o'clock Dr. Hill comes to you and says: "We have worked something out. This is what it is. In my opinion it satisfies my recommendations, and I ask you to endorse it," then you are going to be asked to endorse the agreement without going further. If he says, "We are part way," if you will, or "In part it satisfies my recommendation," and there is still something remaining to be done, no, you are not precluded from going beyond it, but if they have worked out a deal, you are going to be asked to endorse it and do nothing else, as has been the case in the past.

Madam Chairman: Do not take my motion of adjournment too seriously. We still have one other matter to deal with, but I would appreciate it if this actual case be recessed until two o'clock. We look forward to hearing back from you then, and we will all be here waiting with bated breath for some outcome. I hope that is acceptable at this point. I know it is very nebulous. The committee still does have one more matter to deal with. Are there any comments? If not, we will see you again at two o'clock. Thank you very much.

The committee has one other matter before it and it is to do with the Ministry of the Environment and C Ltd. Mr. Jackson is here to speak with us.

Mr. Bell: Tab 4.

Madam Chairman: It is tab 4(iii).

Madam Chairman: We have some additional information that is coming forward.

Ms. Morrison: Madam Chairman, do you need us?

Madam Chairman: Yes.

Mr. Bell: We need somebody on this.

Madam Chairman: Yes. Sorry, I inadvertently used the word "adjourn." That was a mistake.

We have before us Mr. Jackson from the Ministry of the Environment. Again for those of you who are new to the committee, this is a case that was decided some time ago by the committee. A recommendation was made, which has not been implemented as of yet by the Ministry of the Environment. There has been an ongoing discussion about this particular case. A committee recommendation has not been implemented. Perhaps Mr. Bell will give us a bit of background. We have our documentation in front of us as recently as this morning and then I would like to give Mr. Jackson an opportunity to update us and for the committee to ask questions.

1130

Mr. Bell: This case involves both a recommendation of the Ombudsman and subsequent recommendations of the committee, now some six or seven years old. The substance of the recommendations outstanding is for the Ministry of the Environment to initiate an arbitration process, which will determine whether the complainant is entitled to interest on an amount specific.

Some years had passed from the date of that recommendation until discussions this spring with the representatives of the Ministry of the Environment, including Mr. Jackson, and without repeating the details, nothing had been done by the ministry to implement the recommendation.

As a result of some correspondence and attendance in May by Mr. Jackson and the deputy, Mr. Posen, the letter in your material dated May 24, 1988 was issued from the ministry to the complainant. That letter is intended to start the process of implementation by the legal requirements of the Arbitration Act and the process requires an offer of arbitration to be presented to the complainant who must respond. Once that process is finished, they have a board of arbitration identified and they will then proceed.

The May 24, 1988 letter was forwarded to the committee by covering letter May 26, 1988. Therefore, the committee was aware on or about that date of that step being taken. As this is the first occasion of your meeting since May, and because this matter is outstanding for so long, and because of the circumstances of inaction by the Ministry of the Environment, the chair, in consultation with me, decided that it would be appropriate to have somebody from the ministry appear before you. Because of the holiday schedule and the commitments of others, Mr. Jackson is here. I am sure he would prefer to be elsewhere, but in any event he is here to advise you on the most current basis what the status of the matter is and what you might expect to be the timing of the completion of this thing.

Mr. Jackson: The deputy was unable to be here because of family health matters, which have kept him out of town. Mr. Khoorshed is appearing before a court out of town today and that is why he could not appear.

I do not have much to add that is not already before the committee. The offer that was before you, a copy of which was sent to Mr. Decker on May 26, was made. I spoke to [name withheld] earlier this week when he returned from vacation. He had been out of town for a while.

Madam Chairman: Who is [name withheld]?

Mr. Jackson: [Name withheld] is a gentleman who is associated with—

Madam Chairman: I thought maybe it was the solicitor.

Mr. Jackson: No. I am sorry. The gentleman whom we wrote to was out of town on vacation. I do not know when he left, but he has been out of town recently, until early this week. I got hold of him Monday morning and he told me that he had asked his associate, whose name I will not mention, to deliver the letter to their solicitor and they have not heard back from their solicitor yet. I expect he will be stirring up his solicitor to respond. As soon as we do have a response, either from the company or the solicitor, we will proceed with the arbitration. If there are any particulars of Mr. Khoorshed from the ministry's letter that they feel need clarifying or changing, we will deal with that request promptly.

Madam Chairman: Did they give you any indication when contacted of why the response from them has taken two and a half months?

Mr. Jackson: Just that the one gentleman associated with the company had given it to the other gentleman and he had sent it to their solicitor, and they had not heard back yet.

Mr. McLean: That is my understanding. Some weeks ago I was in contact with one of the partners and indicated to him that he should be proceeding rapidly with it. He said it was in his lawyer's hands and they would be doing it. I indicated that he should be after his lawyer to proceed and get in touch with the ministry.

Mr. Jackson: The gentleman had been in contact with another MPP in the meantime, as well, and we had sent that MPP a copy of Mr. Koorshed's earlier letter. They have probably heard from more than one MPP that, now that we are doing something, they should do something.

Madam Chairman: Any questions on this from the committee? I am just very pleased to hear that you did contact them on your own initiative earlier this week. I think if both of you work hard and we work hard, this will be resolved within each of our lifetimes.

Mr. Jackson: I hope so.

Madam Chairman: Some of us have more time than others, but indeed it does not appear as though three decades are going to be enough. Mr. Bell, any final remarks?

Mr. Bell: Mr. Jackson, the committee is going to be here, including this week, for the next three weeks. Would you undertake with your colleague Mr. Koorshed or Mr. Posen, probably Mr. Koorshed, in that interval, to continue to communicate with the individuals and/or their legal counsel, and before the committee wraps up its hearings the week of August 22, to advise us, by letter to the chairman of the most recent developments? If there is still no response or if there are flies in the ointment, would you please tell the committee about them? It may be appropriate for the committee to issue some further directions before it winds down its hearings.

Mr. Jackson: Yes.

Madam Chairman: Thank you again, Mr. Jackson. Many of us who have seen you do realize that, really, this is not your direct responsibility any longer, and yet you appear to be before us on it time and time again. We do encourage you to take your enthusiasm to the people involved and press ahead with this matter.

Mr. Jackson: I will.

Madam Chairman: For committee members, we will resume at two o'clock to deal with the case of Mrs. J. We are adjourning now. We will do the case. That may be very short or long, depending on the outcome of their discussions during the recess. Then we will discuss at that time, in the presence of the Ombudsman, the counsel's role with the committee with regard to the Ministry of Education case with Mrs. H.

Tomorrow, we will be going into expanded jurisdiction. We have some binders over here for those who will be dealing with that, so this afternoon,

do not leave the committee without at least ensuring that you have your expanded jurisdiction material with you. We are adjourned until two.

The committee adjourned at 11:40 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

OMBUDSMAN'S RECOMMENDATIONS. DENIED

WEDNESDAY, AUGUST 10, 1988

Afternoon Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Bryden, Marion (Beaches-Woodbine NDP)
Carrothers, Douglas A. (Oakville South L)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
Mackenzie, Bob (Hamilton East NDP)
McLean, Allan K. (Simcoe East PC)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Daigeler, Hans (Nepean L) for Mr. Lupusella
LeBourdais, Linda (Etobicoke West L) for Mr. Carrothers
Tatham, Charlie (Oxford L) for Mr. MacDonald

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. Daniel G., Ombudsman
Morrison, Gail, Director, Investigations
Meslin, Eleanor, Executive Director

From the Ministry of Health:

LeNeveu, Ron, Assistant Deputy Minister, Corporate Administration

AFTERNOON SITTING

The committee resumed at 2:06 p.m. in committee room 1.

Madam Chairman: I think we can call the meeting to order. I am sorry the chairman did not note that we had a quorum. The copy circulator was blocking it. Dr. Hill, are you going to speak on behalf of this case?

Dr. Hill: Yes, my executive director and I will speak. We had what I considered to be a very fruitful two-hour period, somewhat hectic, but I consider in the end fruitful, subject of course to your consideration and your discussion. My staff and I met separately; Ministry of Health officials met separately; then we came together for one big blowup.

Dr. Barkin from the Ministry of Health attended, and again subject to your consideration, we think we have come to a resolution of the problems that had been put before us and that have indeed been put before the standing committee. It is a three-point resolution which we will discuss and describe right now. Eleanor, do you want to cover the first two points? Then I will deal with the third.

Mrs. Meslin: Sure. The agreement we have come to is, number one, that the ministry has agreed that it will give us the information referred to this morning and relevant information that it thinks and we think we need to take another look at this very, very difficult matter. They will give it to us by the end of this month.

The ministry has also agreed that when a safe process for donor sperm has been established, which we hope will be in the near future, that the applicants, these people, will be paid for this process. At this point the ministry is examining the issue and making some determinations.

They have has pointed out to us the concerns about acquired immune deficiency syndrome and we accept those concerns justifying their refusal to pay for it at this particular time because they cannot at this time ensure that the sperm would be AIDS-free. But there is a process being developed where there will be safe donor sperm and, as soon as the ministry agrees that it has a safe system, our applicants will be paid for in those terms.

Dr. Hill: The third and last thing, which I consider a most important provision of this agreement that the ministry and we have discussed and come to, is, how do we deal with problems like this in the future? How do we deal with conflict in future between the Ministry of Health and the Ombudsman's office? How do we resolve issues without it either coming to the standing committee or being a blowup? What do we do?

I have suggested during our meeting that we do what we have done with the Workers' Compensation Board, with the Ministry of Correctional Services, with the Ministry of Education. We have established high-level top committees so that every issue of some importance coming before the Ombudsman, every case that does not seem to be easily resolved is worked out with a joint committee between the Ombudsman and the ministry involved.

The Ministry of Health has agreed now to work with us on such a committee. Dr. Barkin himself will be, I imagine, chair on that committee; I will be there when necessary and my staff will be there. Issues henceforth that come before us will be resolved at a much earlier, much faster level,

including the horrendous policy questions involved in this whole question of donor sperm and the future. Where is it going to go and what is the implication for the Ombudsman and social policy?

Some of the questions that were being raised by Dr. Henderson would be discussed as the first issue between the committee and ourselves. A committee will be set up to deal with those matters in the future. That is the three-way settlement, subject, again, to any points you have.

Mr. LeNeveu: No, that summation is—the ministry totally agrees with that. That is a very able summary of the discussion.

Madam Chairman: I see a number of committee members who are interested but I do want to say on behalf of the committee initially how pleased we were at how productive you have been in two hours and 20 minutes. We must say that we really appreciate that and that Dr. Barkin on behalf of the Ministry of Health was able to make himself available on such short notice. I think that facilitated the process and we do appreciate that.

Mr. Bell and then Mr. Mackenzie.

Mr. Bell: Dr. Hill, the first part: The issue of the ministry funding donor sperm by some means in some program is the subject of the information and documentation you are going to be receiving. Is that correct?

Mrs. Meslin: No, not particularly.

Mr. Bell: What is the subject matter of the thing you are going to be receiving so that you can take another look?

Mrs. Meslin: We are receiving all of the information we need for the issue of whether the ministry should agree to provide donor sperm on a broad general basis. The agreement the ministry and the Ombudsman have come to was only in relation to these applicants because of this delay and the problem that was raised this morning.

Mr. Bell: I take it that what you want to do, after receiving and considering that, is to visit again the conclusions and the recommendations as they relate to that issue?

Mrs. Meslin: That is true.

Dr. Hill: Yes, another look.

Mr. Bell: Leaving it open to decide whether, in the language of your act, the ministry's response has been adequate or appropriate. Correct?

Dr. Hill: Exactly.

Mr. Bell: All right. I take it that the agreement between you contemplates at some time in the future, either indeterminate or specific time, a report back to this committee?

Dr. Hill: We certainly will share with the committee what has happened.

Mr. Bell: I think at some time in the future you have to tell this committee in an appropriate way what has happened and what your conclusion is about—

Dr. Hill: Considering what has come before the committee, I think we owe that and we will report back to you. I do not know the form of the report exactly, but we will certainly let you know what happens.

Mr. Bell: OK. I take it that in specific terms, both the ministry and yourself are asking this committee to adjourn indefinitely any further consideration of this case?

Dr. Hill: Yes.

Mr. Mackenzie: I am a little confused. I have no difficulty with the request and the fact that two parties have worked out what I would call an interim agreement, if you like. But given the case that was presented to us, I would have thought that implicit in that was that once the details or safeguards are worked out, sperm would be covered. Am I wrong in that, or is that something you are not prepared to make a firm recommendation on until some further time?

Mrs. Meslin: We are not prepared to make a firm recommendation because of the possibility of information we had not previously received coming to our attention.

Dr. Hill: We are prepared to hear the horrendous issues that have been brought up and we want to hear them, and the new submissions that are being given to us, before we make that determination.

Mr. Mackenzie: I would have difficulty if we could not guarantee some kind of safe procedure—presumably, there is nothing in the way of AIDS or anything else involved—but otherwise, I think we have really copped out on the basic question that was in the recommendation from the Ombudsman. That, to me at least, is of some concern.

It seemed to me that there really was some merit in the broader issue also that was raised here, unless there is a total backoff now, as to whether or not this is a procedure that should be handled in some efficient and less costly way, such as the way we deal with blood, for example. To me, that made ultimate sense and I do not think it is an issue that is going to go away.

While I do not want to kick over any of the traces in terms of the agreement you have made, it seems to me we are backing off substantially here, and that bothers me.

Dr. Hill: I do not think we are backing off. I think we are saying, "Give us a month to take another hard look at this," given the submissions that the ministry is supposed to present to us. Dr. Barkin said he has substantial and very important information now, which he did not understand he had to proceed with before, that he wants to present to us. I think it behooves us at least to take another hard look at what they are going to present before we finalize this matter.

Mr. Mackenzie: I am not sure this would satisfy me, but is it possible then that you might come back in with the same kind of a recommendation you have made here?

Mrs. Meslin: Certainly.

Dr. Hill: Sure. We are just saying, "Let's wait just a bit."

Mr. Mackenzie: In dealing with this and finally reporting back as a

committee, obviously we cannot deal with the actual recommendation of the Ombudsman if it is being temporarily withdrawn, but are we able to deal with the issue we have dealt with, in that this is an issue that should be resolved?

Mr. Bell: The matter is before you, and it has happened before that during the course of the discussion the Ombudsman has said: "Whoops, I wasn't aware of that. I'd like to think about it for a month and I will get back to you." If he comes back and says, "For all of these reasons, I accept the ministry's response as to why it is not doing it," it is within your authority to accept that or to do something on your own, and the reverse is also true. I think what I hear Dr. Hill saying is, as he just did say, "Give us some time and we will get back to you."

This committee, though, does require something in writing from the Ombudsman at the end of the month's process: If it is that he is sticking to his recommendation, why; and if he is not sticking to his recommendation, again why? You can visit the question at that time.

Dr. Hill: I have been assured by Dr. Barkin that they will have their submissions fully to us within three weeks to a month. Give us a few days after that and we will get back to you.

Mr. Henderson: I have some questions and concerns that are perhaps coming from the same direction as Mr. Mackenzie's. I gather that there is no question in anybody's mind that artificial insemination is medically indicated in this case. I do not think that is in dispute, is it? There is a good, solid, strong medical reason for going ahead with artificial insemination. It may not be the only option, but a very strong medical argument can be made that it is the best option and there is medical indication for doing it. Would we all be in agreement about that? Mr. LeNeveu also?

Mr. LeNeveu: That would be one of the alternatives. Obviously, there are other choices, as you say, and we could touch on those, but from a medical perspective, that would be indicated, recognizing the condition of the patient.

Mr. Henderson: I would like to put it a little more strongly than that and ask, would you not agree that, bearing in mind the 25 per cent chance of a serious retardate were they not to opt for artificial insemination and bearing in mind the risks—

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Mr. LeNeveu: I am not disagreeing.

Mr. Henderson: —not to mention the emotional factors involved in a monitored, possibly terminated pregnancy and so on and so forth, there is a very strong medical reason for proceeding in that direction?

Mr. LeNeveu: No question.

Mr. Henderson: On the whole question of AIDS, I do not know that I am persuaded that that is very relevant. Artificial insemination is not a new procedure. I can remember learning about it when I was in medical school which is—

Mrs. Meslin: A couple of years ago.

Mr. Henderson: That was the wrong way to begin that comment. I can

remember hearing about artificial insemination a couple of decades ago as something that was occasionally being practised then. The Ontario health insurance plan often pays for procedures and for the technical ingredients of procedures that occasionally lead to infection or are associated with an infection. Hip prostheses get infected; eventually, I think an awful lot of them get infected. But I do not know that anybody has ever said that you therefore ought to pay for your own hip prosthesis. That is not the way it goes, I do not think.

AIDS is a new thing. Artificial insemination has been around somewhat longer. Why does AIDS have anything to do with the question of whether or not a medically indicated procedure is fully compensable under OHIP? There can be a risk of infection in a whole variety of things for which OHIP pays. Why single out this one and say that is a reason for hesitating about covering it?

Mr. LeNeveu: I should not speak in analogies, but the analogy that was raised in the earlier discussion is the protocols that relate to drugs in Canada and their approval. Before a drug would be included in a drug benefit plan, obviously it would be a drug which would have to go through the Food and Drug Administration as to its safeness and its efficacy.

There are examples, however, of those drugs that are not approved sometimes being available; even, I guess, laetrile is a drug that is available. But I think the distinction perhaps is one that with—the most important aspect of this question is to establish a protocol with regard to the safety of the donor sperm. The technology and views on this matter are changing even, by coincidence, as of the last several days. The views in the United States as to protocols of testing are that you should be using frozen sperm; there should be a six-month period.

Mr. Henderson: The sperm is safe; it is the AIDS virus that is not safe.

Mr. LeNeveu: That is right.

Mr. Henderson: The same would be true of blood transfusions.

Mr. LeNeveu: Make sure that the sperm that may be used has in fact gone through all the protocols, and those protocols are being worked out even up to this point in time. Physicians themselves have established committees working on this question. The Ministry of Health also has a process going now as to how all those elements are going to be embraced in a strategy that ties into your analogy of blood.

Mr. Henderson: My question still remains, though, and I do not know that the analogy with drugs is helpful.

Mr. Elliot: On a point of order, Madam Chairman: I think we went through this discussion this morning and I do not think it is pertinent to the particular thing we are talking about right now. We are getting into the same kind of questioning here, with due respect, that led to the process that demanded the two and a half hours that came up with the resolution that is in front of us. I would prefer to handle the resolution at this point rather than get into the discussion again.

Mr. Henderson: I do not agree with Mr. Elliot on that, because I think what I am addressing or trying to address is whether the reason to set aside our consideration of the Ombudsman's recommendation, notwithstanding

that there has been an agreement—and I think that is great—I do not see, given that the issue has been brought to us, why we should not put forward our recommendation. It perhaps can even influence or guide the further course of the agreement.

Madam Chairman: I think the point is, though, that we are not setting aside the Ombudsman's decision, or they are not; they are just deferring it until perhaps we meet again, once they have had an opportunity to review it. That was the second part of a three-part conclusion of their negotiations today, the most important one, in my view, being number one, which is the providing of some information that may allow the Ombudsman to reaffirm his conclusion or in fact change his conclusion. I think the Ombudsman would be more comfortable after he does see some of this material. I think it is just a matter of deferring it for another month or so until we revisit the question again.

The problem we had this morning, at the beginning, was that there was information being brought in about acquired immune deficiency syndrome and various other problems with insemination and paying for the donor sperm. The problem is this was new information in its entirety for the Ombudsman. What you are asking now, and the responses you are getting, really is new information. That was the whole concern that came out this morning. While it may be interesting, it may not lead directly to directing our attention to the resolution that is before us.

Mr. Henderson: Before we set aside the case because of new information, which we have already agreed we are reluctant to do as a committee, I want to examine the question of whether the new information is relevant to what we are being asked to evaluate. If it is the will of the committee that we do it this way, it is OK by me, but I must say I hold a different view.

Mr. Bell: Dr. Henderson, this committee is not setting anything aside in terms of its deliberations. What you are being asked to do is to stand it down for a period of time to let the information flow and Dr. Hill to come back to you. As we said earlier, if Dr. Hill comes back and says, "I'm not pressing my recommendation on the question of funding donor sperm," it is open for this committee to visit that question in any way the committee decides is appropriate. If he comes back and says, "I can now report that the ministry will be including donor sperm as a funded benefit," etc., then it may be academic to consider it any further.

It is really a postponement, because of the problems we got into this morning referable to new information that Dr. Hill and his staff had not considered. You are being asked not to involve yourselves further, pending this month-and-two-day process or whatever it is.

Mr. Henderson: Are you ruling that we not proceed with this line of inquiry?

Madam Chairman: I thought it was a little off the point of what we were discussing, but I wanted to defer to the committee members as to whether they agreed. It has been raised as a point of order now, and I did feel it was getting a little off the particular point we were addressing, which was, are we going to concur in the decision that has been put forward to us today?

Mr. Henderson: I guess then I would say that I personally do not concur, but of course, if it is the wish of the committee to go in that direction, so be it.

Mr. Pollock: Madam Chairman, I just want to join with you in paying tribute to the Ministry of Health officials and also to Dr. Hill and the Ombudsman's staff on at least making progress. I do not think it is too much to ask to give them a month. After all, this particular case has been dragging along for over a year and a half, so if they make progress within that month and come up with a reasonable solution, I think that is only fair. I am quite willing to actually give them that month.

I would have to say that in the case of Mrs. J, I think that particular case is legitimate. I have some concerns about actually going for this, paying for sperm and setting a precedent. That would be my main concern. As far as Mrs. J's case in itself is concerned, I think it is a legitimate case and all the facts point to the fact that this particular situation would warrant it. I just wanted to put that on the record.

1430

Mrs. LeBourdais: Again, I would like to share in commending you for getting together so quickly. I think it becomes an example that once we stop talking, progress ceases.

If I were Mrs. J at the moment, considering that I wrote two years ago and asked for some information—on page 29 of the synopsis it mentions that adoption was ruled out because of the long process—if I had initiated adoption proceedings two years ago, perhaps I might have that child by now. Second, we do not know the age of Mr. and Mrs. J. We do not know if Mrs. J is getting past the biological time clock to carry a child. That is not something we were aware of.

I am just wondering where they stand. We discussed at the beginning of this that we were touching on a very sensitive issue. Somehow, I think we have lost the sensitivity that there are a couple out there who want a child. There will be another delay of perhaps a month and it is more likely to be more than that. How long is it before you actually begin to communicate with this couple and get an answer so that they can begin to get on with this aspect of their lives? How much longer will it be before you come to them with some sort of answer?

Dr. Hill: Mrs. J is understandably impatient. She is also 22. As I said, age does not have anything to do with it in terms of her impatience in this respect, but she is young.

Mrs. LeBourdais: But she was 20 when this started.

Dr. Hill: That is right. She will have to bear with us a little while longer. I think we should be able to resolve it—at least I am hoping that—in a short period of time.

Ms. Bryden: Did your meetings—which appear to have been very fruitful, and I am glad they were proceeded with—explore what was raised earlier this morning? Is there any sort of fund the ministry has access to out of which it could make a payment in this particular case—not necessarily under a program called schedule of benefits or payment for sperm, but on the ground that this is a special case which Dr. Hill's report has established as being a very special circumstance and a sort of heart-rending case where there appears to be no alternative? Is there any sort of fund from which you could make a payment in this case on the humanitarian grounds of a family having to make a very difficult decision about its future and its child-bearing capacity? Was that discussed this morning at all?

Mr. LeNeveu: That alternative was not discussed, if that is your question.

Ms. Bryden: I think it was suggested earlier in the morning.

The point I wanted to make is that I agree with Mrs. LeBourdais that it is a deferral and it may be a longer deferral than we think. I understand the information is to go to the Ombudsman within 30 days, but he will need time to study it, to read, to review his whole case and then to get together probably at a high level with you to see whether his new conclusions are satisfactory and also to talk about what sort of program might be set up if there were agreement that such a program should be set up with adequate safeguards.

I can see the whole thing going on for two or three months, by which time we may be into the December adjournment and this committee will not meet again until maybe March. I think it is unreasonable to expect that this kind of very serious case, which has been very well established by the Ombudsman as being a very serious case, should go without any sort of payment or answer to the problem.

Therefore, I would like to suggest that this committee explore whether we can recommend some sort of special payment for this case and in effect say that we concur that the refusal of benefits was legal in accordance with the legislation, but as the Ombudsman has already decided it was unreasonable in view of the circumstances of the couple, therefore we think some action should be made, particularly in view of the long wait in this case, and at the same time we heartily endorse the procedure that has been suggested to us for a further review of the whole question of what kind of change you would make in the schedule of benefits to accommodate similar cases or whatever cases are considered should be covered.

Madam Chairman: Mrs. Meslin, could you clarify on two parts? The first is whether it is part of the agreement to accommodate Mrs. J, which I think it is. The second is, could you give us some commitment as to a time line of when you come back? I think the House is tentatively thinking of resuming the week of October 17, so we will be empowered to sit on the Wednesday mornings after that. Could you give us some commitment that you will be able to come back in those first weeks we are back sitting, if you are unable to come during the week we are sitting in September?

Mrs. Meslin: As to the first issue, the deputy has agreed to pay for the donor sperm for this couple as soon as safe sperm is available. What we intend to do over the next short period of time in the senior, combined committee is discuss that as one of the specifics. In other words, what are we talking about? Is there no safe sperm available now, and if there is not, when is it likely to be? Our hope is that we will come to that particular decision or come back to this committee to say, "They say there is never going to be safe sperm," as an extreme, or, "They have told us there is going to be safe sperm available at such-and-such a hospital in three months." The ministry has agreed to pay Mrs. J for that donor sperm as soon as it is safe.

Ms. Bryden: I am sorry, I must have missed that part of the report.

Mrs. Meslin: On the second issue, the commitment to return, the ministry has said it will provide us with all the information it has by the end of this month. We will then need time to assess it, of course, and our hope is that we will be able to report back at the first or second meeting of the committee when it sits in October. The committee will be travelling the week of September 26. If we have something then, I do not think anything will stop us from raising it. We are as anxious as the committee is to put this

Ms. Bryden: But is it not true that there will be a whole lot of other issues besides safe sperm to be considered in setting up a regulation that may control whether this can be added to the schedule of benefits, that it might take even two or three months of high-level talks to produce this, and then cabinet approval? Is that not possible?

Mrs. Meslin: That is a possibility, I guess.

Ms. Bryden: This is what worries me, so if the committee can do something to at least get that payment to Mrs. J as soon as the safe sperm is available—

Madam Chairman: I think the problem is the normal procedure of the committee is that after it makes recommendations, the reality of the situation is that no matter how much the agency does endeavour to take our recommendation to heart, it does take a number of months to implement, so that if it takes only two or three months, that is a very positive time frame in terms of our previous decisions and the tabling of the report and so forth. Two or three months would be the best we would be looking at in any event. If it takes only that long, I think the committee—

Ms. Bryden: What I am saying is it could take six months to get the full new schedule of benefits, if that is what we are aiming at.

Mr. Daigeler: First of all, I would say that we certainly should accept the proposal by the Ombudsman and the ministry to adjourn this case. I think it is quite obvious. However, I would just like to say that I have some great difficulty with the ministry on this. This is a case that has been there for a considerable length of time. I think the first letter was written almost two years ago, and if it is now possible to, basically in a few minutes, make a decision on this specific case which satisfies this lady, why was that not possible two years ago? What was the main, major policy reason that prevented this from happening up to now?

I think there is room for the ministry to take a serious look at how it is dealing with these questions because if on the spur of the moment somebody can come in and say, "OK, now we are all of a sudden paying for it, whereas for two years we did not," I think there is something wrong here.

1440

Mr. Tatham: I wonder, if we say yes, we are going to pay this couple, in fact then do we do it for the rest of the people?

Mrs. Meslin: That is not this specific agreement.

Mr. Tatham: No, but I mean in fact, let's be political for a moment. You are political, are you not?

Mrs. Meslin: That is your job.

Dr. Hill: I think this needs great and further discussion in that committee I am talking about that is going to be established, rather than our giving a top-of-the-head answer to it. I really think I would have to mull that over. So would the ministry with us.

Mr. Tatham: Do you not set a precedent that way?

Madam Chairman: By giving the cost of the donor sperm to Mrs. J? They have not made a recommendation for everyone.

Mr. Bell: No. It is a circumstance that somebody in a similar circumstance might be able to reference on a request of the ministry for similar treatment. It has no binding legal or other effect on the ministry or the Office of the Ombudsman.

Mr. Tatham: So we could do it in this case, then somebody else could come up and we find out that we are into deep water and we cannot put the boat out. Is that it?

Mr. Bell: No. If Dr. Hill comes back in October and says, "I have another one. The circumstances are exactly the same and for some reason the ministry will not pay this time," you can visit that question again.

Just because you have funded couple J does not mean you have to fund couple Z. In any event, all we are talking about is a period of time between now and when the ministry makes decisions necessary on a comprehensive basis with respect to the policy, and from my layman's perspective, when the fundamental question of safety is adequately addressed.

But no, you are not setting a precedent that is going to bind your or anybody else's hands.

Madam Chairman: Might I make the following suggestion to the committee that I think might satisfy the concerns raised by both Ms. Bryden and Mr. Henderson? It is that we concur with the decision that has been reached today between the Ombudsman and the Ministry of Health, the three-pronged plan, and that we request that the Ombudsman in any event, no matter what happens, report back to this committee and give us his recommendation with respect to this particular case.

In the event that your recommendation has changed in any way from the one that has been presented before us over yesterday and today, you should provide us with the reasons for the decision and the change in the recommendation.

At that time I would be prepared to open this for discussion at the committee, as well as any of the concerns that have been raised around the room. In particular, the ones I have heard are Mr. Henderson's and Ms. Bryden's. We can discuss them at that time. I anticipate that will be towards the end of October.

The delay in time may still be of concern to some committee members, but in fact that would be the process that we would undertake. Does anybody have any problems with that?

Mr. McLean: I would like to know the reasons that, yes, Mr. and Mrs. J now are going to be paid for the sperm, or whatever the need is. What jurisdiction does that come under? If they are paying for this one, then really what we are saying is that this report of the Ombudsman is being accepted, because that is what they are asking for. I have to think that our counsel would be the first one to make a case out of it if somebody else came and applied for the same thing. They would have a good case and he would be the first one to say, "Yes, there has been a precedent set," and this and this and this, "and you can't now refuse the other."

I happen to believe that really what has happened here is that the recommendation of the Ombudsman is being accepted, so to speak, and when they come back within a month, I think that is probably what is going to happen,

because, really, the ministry is saying now, "Yes, we are going to pay; under what jurisdiction and where in the ministry are we getting the funds to pay for it? That has been authorized through the legislation."

I would like to know where the answer to that question is.

Mr. Bell: Mr. McNeil and Mr. Tatham, could we go at it this way?

Mr. Tatham: It is Mr. McLean, not Tatham.

Mr. Bell: I am sorry.

I always come from the school that if a ministry of the crown comes to me, or to anybody else, and says, "I am going to pay you," there is a presumption of an authority to pay. Where the authority lies I frankly do not care.

In so far as the binding nature on somebody else in similar circumstances is concerned, that ministry is not bound to pay anybody else who comes forward in similar circumstances. What the ministry may be precluded from saying in the future, though, is, "We haven't got the authority to pay." That is a different issue. That leaves for consideration the merits of the next person in line, and I am sure the ministry considered that issue before it made its decision in respect of Mr. and Mrs. J.

Yes, you are right, a case can be made, not for the binding obligation of the next person in line, but merely the existing authority to fund it from some place, and frankly, I do not care where that place lies.

Mr. LeNeveu: I think this is a small point, but we would prefer to use the word "provide" as distinct from "pay."

Mr. Bell: And I do not care what word you use.

Mr. LeNeveu: In the blood process, we normally talk about providing blood as distinct from paying for blood.

Madam Chairman: Are there any objections to the suggestion I made with regard to how we handle this from now on, that we concur we will revisit the question, in effect, when we get the Ombudsman's report? No objections?

Mr. Daigeler: No objection but one question. In the continued study of the Ombudsman, will you be looking not only at the question of the semen here, which is actually secondary in my opinion, but also at the question of the possible Ontario health insurance plan coverage of what is described here as the use of drugs, pharmaceuticals and other biological methods that may be medically necessary? I think that is a question which, in itself, needs some inquiry as well. Will that be part of your question at hand?

Mrs. Meslin: No. We have to respond to the complaint as it is raised and to the narrow area that it covers.

Ms. Bryden: Do I take it that if we accept your suggestion the item leaves the agenda, that we have really dealt with it today and it is postponed? At what stage, then, could you suggest that as soon as the ministry knows that safe sperm is available after the House meets in October, a special meeting of this committee be called to deal with the question of whether it can be provided then to Mr. and Mrs. J, rather than waiting for the full report, which may take much longer?

Madam Chairman: I think Dr. Hill has committed his office to providing us with some kind of report that we will be able to deal with as soon as the Legislature resumes. We are empowered to sit from 10 to 12 every Wednesday morning, so we will be dealing with it, I presume, either one or two weeks after we sit again, so towards the end of October. I do believe we have that commitment.

1450

Ms. Bryden: It does require another meeting, I presume, before we can say, "Go ahead and provide it."

Madam Chairman: Yes.

Mrs. Meslin: Can I just make a correction? The understanding is not that we have to come back to the committee to say safe sperm is now available and ask you to agree to provide it. The ministry has already agreed to provide it. If they find next week that they have a method by which they can ensure safe sperm, they will provide it next week.

Ms. Bryden: This is what I wanted to know.

Mrs. Meslin: Then we will report to this committee to that extent.

Madam Chairman: I think the only reason why we have to revisit the question is if the recommendation of the Ombudsman changes and/or if there is no solution, if what has been resolved today does not end up happening in the next few weeks. Heaven forbid if their documents are not provided within the time line and there is no high-level, top committee organized and there are ensuing problems. Then we will come back. My understanding is Mrs. J will be provided with sperm in the near future, if everything else can be resolved. I think that was the part. Are there any further questions on this or can we say thank you?

Mr. Mackenzie: Proceed to the next item.

Madam Chairman: That is great. Thank you very much.

Ms. Morrison, I believe we have some more matters.

Ms. Morrison: Oh, we have some more business? Now what? Oh yes, we do.

Madam Chairman: I understand it was great news, and I thought you would want to expand upon it for the committee.

Ms. Morrison: Yes, I do. Yesterday, after our meetings here, I heard from the Ministry of Housing a verbal commitment to settle the matter that we were to hear on August 22. That was C Ltd., which was down on your schedule for August 22. They have provided the chairman of this committee with a letter outlining their intention to reopen the matter and, since that time, have apparently had some further considerations and have offered to settle it for the sum that was originally owing, which is \$18,196.57.

Dr. Hill has considered that and has agreed that it would be a satisfactory resolution of the matter. We have asked them to provide us with this offer in writing. Given the past history of this complaint, I will not say that it is officially resolved until we have received it in writing and the complainant has a cheque in his hot hand. But I think we can consider that the matter will be resolved.

Madam Chairman: Do you see any possibility, since we do have it on our schedule on August 22 at the moment, and we are going to be here anyway for another matter, that the Ministry of Housing or the Ontario Housing Corp. can in any way be encouraged to provide that cheque and the letter in writing prior to August 22, so that we can be assured the entire matter is cleared up? I would hate to, at this point, remove it from the agenda, although we may find time for it again. I guess this is, what, an eight- or 10-year matter? It has been outstanding. I just wonder, anyway, if we can use our tight schedule and enthusiasm to have this resolved.

Ms. Morrison: I would be very pleased to pass on the information that the committee would like the matter resolved before August 22, and perhaps that would ensure that it would be.

Madam Chairman: Great. And you will, of course, keep us updated before August 22 as to whether you have received the letter?

Ms. Morrison: Yes.

Madam Chairman: At least if the letter has come to your attention.

Ms. Morrison: I am expecting to receive it this afternoon.

Madam Chairman: Thank you very much. We really appreciate that report. I think I see a few smiles around the room. I know the chairman has one on her face.

Is there anything further with regard to anything we have in front of us? I still want to discuss the counsel's role in the Ministry of Education and I appreciate someone from the Ombudsman's office staying to discuss that. I think that was the only other matter where we required your input.

Ms. Morrison: May I just ask a question?

Madam Chairman: Yes.

Ms. Morrison: August 22 also has the Ministry of Education scheduled. Am I correct?

Madam Chairman: That is right. Right now, the schedule has the Ministry of Education on it, too, but we will of course move that ahead to one, because if the Ministry of Education does come before us, I would like as much time as possible to deal with it and conclude it by the end of the day; we only do have that one day for it.

I would like to bring up now the situation we have discussed a few times over the last couple of days. One is the one our counsel, John Bell, raised with respect to the feeling or the concern—

He provided us with information that he has, and I do not want to put words in his mouth, on occasion, from time to time in the past, in his legal capacity, worked for the Ministry of Education. I know the committee had raised varying amounts of concern about him potentially working on our behalf or with us on the case that is before us, now scheduled for Monday, August 22, and that is the case of Mrs. H and the Ministry of Education. This is a superannuation fund issue. It is not one which Mr. Bell has ever dealt with before in relation to the Ministry of Education and I think he just wanted to disclose that he had been at some time a representative on behalf of the Ministry of Education.

He since then has informed us that the Ministry of Education has said that they have no problem with him acting here on our behalf. We have the Ombudsman's office before us right now, who are working on behalf of the complainant, and my understanding is that they have no problems with Mr. Bell being involved in the event that this case still comes before us on August 22. I would appreciate hearing from Ms. Morrison the Ombudsman's position. Then I would like the committee to discuss and if anybody has any problems with Mr. Bell continuing as our counsel for this particular case I would like to hear it today.

Ms. Morrison: I have spoken to Dr. Hill and to Mrs. Meslin about this matter. We feel that not only do we not have any problem with Mr. Bell acting in this particular case— We act, as you know, on behalf of the complainants when we get to this stage of the process and I think we feel that even though we are acting on behalf of the complainants, we have no problem with any possible perceived conflict of interest. Further than that I think all of us who have had experience with this committee and with Mr. Bell as counsel have found it very valuable to have such an experienced counsel helping the committee out, especially in a very difficult case such as this one is going to be, if we have to hear the whole matter, this Ministry of Education matter. It is quite a technical matter and I think we would very much require the assistance of experienced counsel to help the committee through it.

Mr. Mackenzie: I think the hired gun's ties are loose enough that if neither of the parties object I have no objection.

Madam Chairman: Do we hear any objections?

Ms. Bryden: I was one of the ones who expressed some concern. At that time I think I was under the impression that Mr. Bell was actually in the legal department of the Ministry of Education and had been seconded to this committee, which is not the case. He is an independent lawyer and I certainly think he has done an excellent job in the hearings we have had this week on behalf of the committee in his method of proceeding with the questioning.

I think it would be a great disadvantage if we did not have any counsel at all on the ground that Mr. Bell could not act and they might not be able to find somebody else on short notice to become as familiar with the case. Also, his previous experience with this committee is very valuable. And for the same reasons that Mr. Mackenzie mentions, if neither the Ministry of Education nor the Ombudsman have any problems and feel their case would be prejudiced in any way by having somebody with Mr. Bell's experience and background, then I would not object either.

Mr. Tatham: I have commented on it. I suppose I have no problem, although my brother married a Bell.

Mr. Bell: Does your brother have a problem?

Ms. Morrison: No, but his wife does.

Mr. Pollock: Just putting it this way, what happens if the party who is bringing the case forward, like the Ombudsman, loses?

Madam Chairman: If the plaintiff loses?

Mr. Pollock: If the plaintiff loses, what happens? Is there going to

be a spinoff there, do you think there would be any problem in any way, shape or form?

Madam Chairman: Ms. Morrison, you would be best to answer. Just before you do, I have to say that, although to the best of my knowledge we have not had appeals from our decisions, we do often get appeals from the Ombudsman's decisions, and that is what the subcommittee on communications deals with on an ongoing basis throughout the year. No matter what process is used, people often make accusations of bias and so forth. I do not think you can avoid that, but keeping in light of the other, Ms. Morrison, do you have any comments on the complainant's position?

Ms. Morrison: Although it seems like a win or loss for the complainant, especially in this particular case that we are talking about, in the sense that we are really talking about a change in legislation. That is one of the points. The other point is, I think there is no basis for setting any loss, as it might be called, at the feet of a conflict of interest because there is no conflict of interest. I really do not have any problem with it at all.

Madam Chairman: Are there any further comments? I have not heard any objection, and I would assume from the lack of objection that we will continue to have Mr. Bell as counsel, if indeed the case is not settled before August 22. We have heard how difficult it is, so I am sure we will all be preparing over that weekend to be well versed in the particular matter.

I have on the agenda any outstanding matters from previous Ombudsmen and committee reports. I think now we have dealt with most of those, unless you have anything further from today with this particular thing.

Tomorrow, we will be discussing expanded jurisdiction. The clerk is just now passing out some material on expanded jurisdiction for your perusal. It is the initial briefing book. Tomorrow morning at 10 o'clock we will have the opportunity to hear from Mr. Bell, and a briefing so that we sort of know what we are getting into—the current jurisdiction of the Ombudsman at this time. I think many of us would benefit from an understanding of what exactly he has jurisdiction over now before we delve into the question of how we should expand it. That is what we will be dealing with tomorrow, and I think it will be a good briefing session. The Ombudsman's office will be giving us a briefing on Monday on their point of view on expanded jurisdiction in the three areas that they have suggested. Then the agenda will follow as has been distributed.

Do you have anything else, Mr. Bell?

Mr. Bell: No.

Madam Chairman: Do any committee members have anything else?

Mr. Mackenzie: I move we adjourn.

Madam Chairman: Is that a motion? And you beat Mr. McLean. Oh, you are slipping. I accept that motion to adjourn. We will see you tomorrow at 10 a.m. Thank you.

The committee adjourned at 3:04 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
EXPANSION OF OMBUDSMAN'S JURISDICTION
THURSDAY, AUGUST 11, 1988



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Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella
LeBourdais, Linda (Etobicoke West L) for Mr. Carrothers
Tatham, Charlie (Oxford L) for Mr. MacDonald

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Zacks, Michael, General Counsel
Meslin, Eleanor, Executive Director
Morrison, Gail, Director, Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Thursday, August 11, 1988

The committee met at 10:10 a.m. in room 1.

EXPANSION OF OMBUDSMAN'S JURISDICTION

Madam Chairman: This morning we are going to start our hearings on our briefings on expanded jurisdiction. As everyone is aware, we are going to be having hearings over the next two weeks. This will provide us with some background material.

You all should have the briefing book, the big black new book, not the one you have been dealing with thus far. You should have that one in front of you. It is being prepared and John Bell tells me that he is not going to go over the actual material you have in front of you in great detail. He assumes that you will take the time to read that. He will give an overview of a variety of areas for the jurisdiction of the Ombudsman.

The clerk is also passing out some articles on yesterday's case of Mrs. J that we heard, for those did not already see them this morning. Are there matters before we begin the discussion?

Mr. Pollock: Just one the thing. Maybe this was the obvious question. Maybe it got asked and I just did not hear it. But in the case of this sperm bank that they talk about, is there only one donor to that sperm bank? What is the situation on the particular score? Why is there the problem, say, the Ministry of Health officials raised with acquired immune deficiency syndrome, for instance, if there is only one donor?

Madam Chairman: I think there are lots of donors at a sperm bank. It is very similar to the Red Cross which has a bank of blood. There are a lot of donors to the sperm bank. Some are anonymous, as I understand it, but I am not sure that is an accurate statement, but I gather that some of them have not gone through the same rigorous testing that one might go through when one gives blood.

Mr. Pollock: But in the situation in which they want artificial insemination, could they not specify one particular person? Or do they not have that option?

Madam Chairman: Not unless they could find a friend to do it.

Mr. Pollock: I see.

Madam Chairman: I guess that is the way you can really ensure that it is provided free of charge, if you can find a person or acquaintance willing to provide it to you for free.

Mr. Pollock: I see.

Madam Chairman: Are you offering your services, Mr. Pollock?

Mr. Bell: It is a bit like a lottery.

Mr. Pollock: No, no control.

Madam Chairman: No control. I do understand that some people do have control. They said they have set up sperm banks of special people, Nobel prize winners and so forth.

Mr. Bell: I just wanted to clarify—

Madam Chairman: My answers, were they sort of accurate?

Mrs. Meslin: Yes.

Madam Chairman: Close enough for a Thursday morning. Anything else before we begin? OK.

Mr. Bell: Members, the chairman has already referred you to the second brief. That will, in substantial terms, be my reference point for this morning. There is some other documentation that I just want to refer you to, one of which you should probably have open as well.

The clerk distributed, I believe, yesterday along with the second brief, a package of legislation. It would be useful if you would have open the Ombudsman Act as we proceed this morning, and in addition, the first brief that was distributed to you, in tab 5. This should, I guess, really be in the new brief, but in tab 5 there is a position paper dated September 1986 on expanded jurisdiction from the Ombudsman. I am not going to—

Clerk of the Committee: Switch it over—

Mr. Bell: Yes, we will probably switch it over starting next week. I am not going to refer to this in any real detail. I just commend it to you as further background reading and I have no doubt that Dr. Hill and representatives of his office will refer to it on Monday as they proceed.

There are some areas that I would like to pursue with them. The purpose of the briefing today is not to tell you everything you wanted to know but were afraid to ask about the office of the Ombudsman or in fact the three organizations that are the subject of the expanded jurisdiction review, but more to focus on the current jurisdiction of the Ombudsman in the legal formula sense which has developed, and then review the three areas of proposed expanded jurisdiction in the context of their organization and structure and in the context of some, if not all, of the more significant dispute resolution provisions of the legislation. I call it "dispute resolution" because I think that is the best term. That focus is intended to represent, I guess, our view of where the Ombudsman's jurisdiction will most likely concentrate.

Before I proceed any further, members, I want to publicly acknowledge the extraordinary work that Jennifer Wilson, your research assistant, has done on this work. The material in the first four areas of this brief is hers. I do not pretend authorship. I am the parrot today trying to tell you what it is about. If it is good, which I believe and am convinced of, she deserves the credit.

The last item in this brief under the heading of "Statistics from the Office of the Ombudsman" is exactly what it says. At my request, the office has compiled, over a 10-year period, statistics on complaints received and processed by the office to the specifically described results, those results as per certain categories: complaint supported no recommendation; complaint

supported recommendation; complainant assisted; unsubstantiated; complaint abandoned; investigation discontinued; complaint supported with a recommendation made; complaint supported with a recommendation accepted; and complaint supported with a recommendation denied. It is intended in a statistical way, when it is reviewed for you on Monday by the Ombudsman's office, to give you an overview as to how many, spread over which particular governmental organizations and how long on an average duration basis has it taken in each of these categories.

I am always sceptical of drawing too much from statistics but I think it will permit you make some general conclusions with respect to the office's ability or inability, if you will, to take on an added workload and how it might be spread among the office, etc. Those various categories and results are portrayed for you in graphic form. They should be the first three documents you have in that part. If they are not, speak to the clerk and he can organize you in that way.

I feel, looking at the people across the room opposite me, that this is a little like bringing coals to Newcastle, telling them what the office of the Ombudsman is all about, but I am sure they will bear with me, and where I stray off the rails they will put me back on at the appropriate time.

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When you examine the jurisdiction of the Ombudsman, I think you have to go right to the primary function of the Ombudsman in subsection 15(1) of the Ombudsman Act. In fact, it is that section, substantially, that the courts have taken apart and analysed in determining in a particular circumstance whether or not the Ombudsman has jurisdiction.

Just to remind members, that section reads,

"The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity."

You have heard and know that the Ombudsman's primary function is investigatory. He can then formulate opinions and conclusions and make recommendations, and as you all now know, at the end of his process he can come to the Legislature through you.

His powers, albeit limited to investigation and recommendation, are quite extraordinary, because they may be exercised notwithstanding any privative clause in any provincial legislation.

A classic example of that is the workers' compensation legislation, which has probably the most protected privative clause in provincial jurisdiction. The Ombudsman has from the very beginning exercised jurisdiction over that office and there has never been any formal challenge by the board, although it was dragged kicking and screaming in the early days.

That notwithstanding, there are very specific exclusions over the Ombudsman's jurisdiction. Those are, obviously, judges or functions of any court; cabinet or any committee of cabinet; or any person acting as a legal adviser to the crown or as counsel to the crown in relation to any proceedings. Theoretically, in my capacity, whenever I exercise it, of representing the Ministry of Education, I guess I would be immune from

investigation by the Ombudsman, if I interpret that section correctly.

You also know that there is a provision in the act, subsection 15(5), that permits the Ombudsman, if there is a question of jurisdiction, to make application to the Divisional Court of the Supreme Court of Ontario for a determination.

The Ombudsman has made such an application on at least two occasions, one involving the Health Disciplines Board about eight or 10 years ago and the more recent one involving the Ontario Labour Relations Board, a decision which I think was ultimately rendered last year by the Court of Appeal. Those two decisions of our high court, with the addition of one which came out of British Columbia and went to the Supreme Court of Canada, are generally regarded as the definitive judicial decisions in Canada interpreting Ombudsman jurisdiction.

That is something you may want to consider as the next two weeks unfold when you examine these three institutions, if I may call them that, because when we go through the various formulae and process or tests, if you will, that the court uses to determine jurisdiction and when you examine the Ontario new home warranty plan and children's aid societies and public hospitals, you are going to see some elements of those that come within the jurisdiction test. You are going to see other elements that of course do not, and that is the fact of life with any governmental organization. At the end of the test application, the courts will weigh the balance, as you might.

Let me say at the outset that it is one avenue of consideration that, rather than legislation, the courts might be asked to determine the question of jurisdiction. I do not say that is a reasonable or a practical approach for all of the three. Whether it is for any one of them is, as I say, a matter for consideration.

On the second page of this jurisdictional brief, we set out for you the five tests that the courts have applied and you should keep these tests in mind as you are reviewing in the next two weeks.

I am at the first tab, on the second page of the "Jurisdiction of the Ombudsman" material. In fact, the balance of this paper is a more detailed review and discussion of the various five tests. I am going to spend more time on some than I am on the others.

Madam Chairman: Can I give the Ombudsman and myself a copy?

Mr. Bell: I am sorry. I thought you had a copy. I guess one of the ways of ensuring that you will not correct me is not to give you a copy but it is not very fair.

The five tests that the courts have been seen to employ, alone or in combination, are as follows: Is the subject matter of the complaint outside of the Ombudsman's jurisdiction by virtue of the two sections we have already looked at, section 14 or subsection 15(4), section 14 being the judges or functions of the court or cabinet; subsection 15(4) being the legal adviser of the crown or counsel to the crown. We are not going to spend a lot of time on that, with the exception of is it is a function of the court. If not, then the second test is the entity of governmental—

Mr. Campbell: Could I perhaps have clarification on "judges or functions of any court," does that mean the Ombudsman has no jurisdiction over

the court system, per se, in other words, second guessing a judge or jury?

Mr. Bell: One word: no. Absolutely no jurisdiction in respect to the judicial process as it relates to the court system in Ontario.

Mr. Campbell: Including where a claimant might have an investigation launched and subsequently, in a parallel fashion, attempt to go to court?

Mr. Bell: That is a different issue. There is not an investigation of the court in that circumstance. You are talking about a parallel process which has the potential for inconsistent results and also whether the Ombudsman should investigate to make recommendations which have the effect of altering or recommending a change to a decision of the court that has not been appealed.

I think that may be a question best left for the Ombudsman people when they address you on Monday. I know there has been a past practice where they usually put the complainant to an election. You are either going to go to court or you are going to come to us, you are not going to go to both. Where they have notice of a pending judicial proceeding, my understanding is they usually stand down and let that happen, then decide what they are going to do, if anything, later.

The simple answer is: courts, no way. The interesting exercise, though, has been how flexible or how wide is the definition of functions of any court. I will review those with you in a moment.

Obviously, test 2 is relevant to what you are going to do in the next two weeks because, while it is generally considered by the Office of the Ombudsman that none of the three areas you are considering is a governmental organization, I think it will be of interest to you to examine how close they are to a governmental organization. That may well impact on your ultimate decision about whether jurisdiction should be extended.

The third test the courts apply is, if it is a governmental organization, was the decision in the particular case made in the course of the administration of a governmental organization. You will see that governmental organizations have tried to have that interpretation restricted in a very narrow way and the courts have said, "No such luck. It has to be expanded in a very wide sense. Otherwise, it gives no meaning to the legislation."

Fourth, did the decision affect any person or body of persons in his or its personal capacity? That is really a question of fact again to be interpreted broadly and I am not going to spend a lot of time.

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Last, did clause 15(4)(a) of the Ombudsman Act apply to deprive the Ombudsman of power to investigate the matter? There is reference to one of the decisions I referred you to earlier, the Health Disciplines Board. Clause 15(4)(a) is the "notwithstanding" or "override on the privative" clause I referred you to earlier.

Interjection.

Mr. Bell: Yes, it is the appeal provision, which may determine a complaint to be premature, in the language of the Ombudsman. Where there is an

appeal pending, they will not exercise jurisdiction. Where time has expired or where the decision has been deliberately not taken to appeal, they will assume jurisdiction. Again, that is a question of fact.

The only thing I want to say this morning about the first test is the meaning of the term "court." As we explain for you at pages 3 and 4 of this material, there has been effort by, for example, the Health Disciplines Board - and the Ontario Labour Relations Board in this province, and others in a less formal way, to apply a very wide definition to the term "functions of the court."

The argument had been—and I guess it still exists in some quarters—that you do not examine the forum that is exercising the power, you examine the power that is being exercised; that where that power is quasi-judicial, where the authority to hand out decisions or penalties is equivalent to a judicial or quasi-criminal authority, you should call that a function of the court and the Ombudsman should not have any jurisdiction to investigate. That, in substance, was the nuts and bolts of the Health Disciplines Board process.

Mr. Justice Morden of our Court of Appeal in the Health Disciplines Board case, and subsequently the Supreme Court of Canada in the British Columbia case, hopefully laid that argument to rest, in this province at least, for ever.

At the top of page 3, I just commend one of the quotes of the court where Morden says, "There is little doubt as to the normal scope of the word 'court' and I do not think that it embraces administrative tribunals, even those exercising powers with a substantial judicial component." So even though there is a substantial judicial component in any governmental organization, that will not exclude the Ombudsman's jurisdiction.

When we examine these three areas, you are going to see functions with substantial judicial components. You need not concern yourself or exercise yourself about whether it is appropriate to venture into that water; the courts have already erected the bridge across it.

We set out for you on page 3 certain characteristics of courts and trappings of courts. That is all very interesting, but I am not going to waste your time this morning reviewing it in detail. I commend it to you for review.

Essentially, under the first test, the real issue of concern is "functions of the court," and that has been held to be a very narrow definition not applying to administrative tribunals.

The next, to me anyway, has always been a more problematic test. I am not sure I ever have or ever will fully understand it. It is "governmental organization." "Governmental organization" is defined by clause 1(a) of the act to mean "a ministry, commission, board or other administrative unit of the government of Ontario, and includes any agency thereof."

In the early days, the governmental organizations interpreted that quite literally. They said, "Unless you can point to any one of those words in the description of my governmental organization, I am not a governmental organization."

Again, the Court of Appeal decision on the Health Disciplines Board kind of laid that to rest. Mr. Justice Morden wrote a decision totally supportive

of the function of the Office of the Ombudsman, not only in this province but generally, and put the fire out.

At the bottom of page 4 we highlight for you some of the things that the court said governmental organizations were to include. Obviously, it is confined to the government at the provincial level as opposed to any other level. Being an administrative unit of the government, it must be identified as an administrative tribunal.

Going to the word games, though, if it is not called an agency or a board or something else within the clause 1(a) definition, it is not a governmental organization. This is what Morden would have to say. At the top of page 5:

"I can appreciate why the words 'commission' and 'board' would be a useful part of the definition in section 1(a). However, those words do not exhaust the field of such bodies. There are other names such as society, foundation, corporation, committee and so on. Hence, the convenience of an 'other administrative unit.'"

So if you will, he blew open that definition. I do not think the Ontario Labour Relations Board Court of Appeal decision did an awful lot to improve on that, if it did anything to improve it, so it is still a very open question today what the scope of governmental organization is.

To give you some further assistance, though, again at the top of page 5, it has been interpreted as describing those functions of government which are not performed by the Legislative Assembly and the courts, and what administers the law and government policy.

Some of the features of an administrative unit, and keep these in mind when you examine the three areas next week: It is established by a provincial statute. All three of the areas are established by provincial statutes, directly or indirectly.

Its members are appointed by the Lieutenant Governor in Council. In the three areas, none are directly.

It discharges a provincially assumed regulatory responsibility. All do; certainly public hospitals and children's aid societies, and I think an argument can be made about the new home warranty program.

It is subject to a degree of governmental control, some of the hallmarks of which are that its members are paid such remuneration and expenses as are determined by the Lieutenant Governor in Council; its employees are employed under the Public Service Act; it is required to submit an annual report on its activities to the minister; and the minister is required to submit the report to cabinet and then lay the report before the Legislative Assembly. Some of those elements apply to all of the three; some do not apply to all of the three.

So you have, with these three, some grey areas. I think for the purpose of your review, rather than worry yourselves today about whether they do or do not have jurisdiction, let's go in assuming they do not have jurisdiction, but keep in mind how close they may be.

Again, I think that might assist you. You are going to see, for example, under the new home warranty program, that the Ombudsman has jurisdiction over

some matters under that legislation if they happen to be appealed to the Commercial Registration Appeal Tribunal.

Likewise, under the Public Hospitals Act, if a doctor appeals the refusal for appointment or reappointment at a hospital and ultimately appeals to the hospital appeals board, the Ombudsman can assume jurisdiction, as the Ombudsman in this province did about 10 years ago in a very noteworthy case. It is the only time in the history of this committee that a complainant appeared before your predecessors and pleaded his own case.

In any event, the issue of governmental organization is one that you will be visiting for each of the areas next week.

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The third test, "In the Course of the Administration of a Governmental Organization." Those who opposed Ombudsman jurisdiction historically tried to narrow the scope of that definition. At the top of page 6, again, we give you some assistance. In the words of Mr. Justice Morden:

"the most natural meaning is...substantially 'in the course of carrying out the responsibilities committed to it.' To base the jurisdiction of the Ombudsman on the distinctions between executive, administrative, judicial and quasi-judicial powers is to build it upon quicksand. The fact that a governmental agency exercises quasi-judicial powers does not exclude it..."

"In the course of its administration" means: Is it carrying out what it is required to carry out, or did it not carry out what it is required to carry out in the language of the legislation?

I will not review any more, for now, the BC case or the labour board case on page 6, because that is just a restatement.

On page 7 is the fourth test, "Affecting Any Person or Body of Persons in His or Its Personal Capacity." For your purposes in the next two weeks, this is interesting reading but is not totally relevant to what you are about. It has, again, been given a very wide application by the courts.

The fifth test, the "exercising right to appeal" test, is one I want to review with you just for a few moments, because you are going to see, with the three areas and their legislation, a lot of appeals. On the question of whether the Ombudsman has jurisdiction, you will want to visit the question of when the Ombudsman should have jurisdiction. You may wish, depending on your final conclusions, to have something to say about the timing or the circumstances of same.

Again, subsection 15(4) serves to exclude the Ombudsman's jurisdiction, that which he or she would normally have, if, in the words of this section, there is, "a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any act, until that right of appeal or objection or application has been exercised in the particular case."

That is not an easy section, because it generally includes judicial reviews which do not have time limits or limitation periods. There is a grey area in some of these circumstances and, with each one of these jurisdictions you are going to visit, there is decision-making wherein judicial review is available, not expressly by the courts, but is available by—

I have just been whispered to that it does not include judicial review. Why does it not? Who says it does not?

Mr. Zacks: The Ontario Health Disciplines Board case.

Mr. Bell: OK. Thank goodness you are here. I thought it did.

Mr. Zacks: Otherwise, we would be on quicksand.

Mr. Bell: OK. Forget everything I have said in the last 30 seconds.

Mr. Tatham: I am a little slow on this. In other words, the Ombudsman cannot take action. Is that the idea?

Mr. Bell: No. While the right of appeal is alive, and that is determined by the time for appeal—or while the appeal is pending, is the extension of that—the Ombudsman does not investigate. Once that is done, the Ombudsman has jurisdiction; or—and I think this is a practice of your office—where the complainant confirms that he or she is not intending to appeal or waives right to appeal, you will still hold off?

Interjection.

Mr. Bell: In the old days, Arthur Maloney, if all he got was a person indicating he would not go to appeal, he would go. But you do not do it any more. All right.

The expiry of the time for appeal rejuvenates, if you will, the Ombudsman's jurisdiction on a particular matter. You are going to see a lot of those when you review the three areas.

Mrs. LeBourdais: If an individual wants to challenge the government, must he or she use this route, or can he or she choose the court instead?

Mr. Bell: Depending upon, of course, the substance of the complaint, an individual may seek to have his or her rights protected or redressed by the courts.

The history of the Ombudsman is that his investigations, and some of the most notable ones, are chockfull of situations in which the parties had a right to go to court. Some of them did seek that, independently and additionally to the Ombudsman.

I think the most classic case is the very first one, the infamous north Pickering situation, where a group of over 200 land owners who were affected by the north Pickering airport taking, rather than by some legal means through the courts, challenged the government's actions by going to the Ombudsman.

There have been others. I am just trying to think about the last two we have seen. In regard to the Criminal Injuries Compensation Board, there were two last January which the committee considered, in which the parties did not appeal a decision of the Criminal Injuries Compensation Board to the Divisional Court. They let that time expire, for whatever reason, which is not relevant. Then subsequently—in a couple of cases it was a fair amount of time—they came to the Ombudsman.

As you can see in your material, most recently from the newly appointed chairman of that commission, it looks as though the original Criminal Injuries

Compensation Board decisions are going to be overturned. The people are going to be given some amount of compensation as determined by a new panel.

So it is an election. It is extremely expensive to engage the judicial system in Ontario.

Mrs. LeBourdais: The reason I asked the question is that it seems that, in a sense, the Ombudsman speaks for the disadvantaged or the little guy, because he can go through a judicial process, in a sense, without going before the courts. And also there are the legal costs. Plus he could have a certain amount of anonymity. Then again, someone to whom finances were not a problem could have a choice of counsel and could possibly use the generation of publicity resulting from the case to assist his or her case.

Does it therefore favour some over others if people do have a choice? They have a choice in theory but maybe not a choice in fact if they do not have the wherewithal to know about how to use the systems out there and to pay for them.

Mr. Bell: I do not know how to answer that question without getting into trouble. I think the Ombudsman's office will tell you that, substantially, their constituents are people whose means are, in relative terms, not substantial.

That may well be one of the reasons why those people—but I do not think it should be confined because of the relative cost of litigation to be borne by a person privately in Ontario today. The average cost of a trial in the High Court of Ontario is about \$18,000. I can tell you, I do not know where they get that average from, because my experience is that it is even higher.

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What do you do? Do you have to have a \$100,000 dispute before you want to invest 20 per cent of it? If it costs you \$18,000 to go to court, unless some lawyer will guarantee the result, I do not think you take a \$20,000 claim. If it happens to be a dispute with the government and the government, for whatever reason, is not paying, some people readily go to the Ombudsman to effect that result.

As a matter of fact, you should raise that issue with their office next week, because when you apply the point you are making to the three new areas, by expanding jurisdiction you may see some ability to further assist people in the province because with some of these areas, again, they tend to be, in the majority, financially disadvantaged people.

Mrs. LeBourdais: But there is a choice, is there?

Mr. Bell: Yes, there is a choice.

Mr. Zacks: I am not quite sure what our role is here, but what I am going to say is really not to do with how our jurisdiction works. It is to give you an example of a case I am familiar with where complainants—these were farmers who were suffering crop damage because of salt pollution on their orchards—came to us to investigate, and we would not investigate because there was a cabinet directive saying no compensation would be paid and that precluded our involvement. These individuals then went to court and were

successful. There is no clear analogy or clear-cut pattern that we can give you. There are all kinds of cases and all kinds of variations.

Mrs. LeBourdais: Some of which you accept and some of which you do not.

Mr. Zacks: We cannot accept some because of the kinds of legal problems and limitations on our authority to investigate that Mr. Bell is going through now, and those individuals, when they learn of these things, go to court if they can; if not, I do not know where they go. Others who have a lot of financial resources make a business decision and decide not to go to court, but come to us. Others do not have money and come to us because they cannot go to court. Others go to court because they want that type of legal review and they choose that option.

Mr. Elliot: I have a related question, I think. I thank you for clearing up this bit with respect to the court because that was one thing I wanted clarified too.

A lot of the boards that are making decisions that the Ombudsman's office acts upon are not court-oriented. One that has a lot of complaints is the workers' compensation area. I am wondering, is it the practice of the office to have them go through the whole process, because the cost is not like it would be in a court appearance and there are mechanisms in place within the agency to handle complaints. It seems to me that if the Ombudsman had a practice of getting in too early, there would be duplication that was not necessary. I have been telling people that they really should go through the due process in a case like workers' compensation, and if they do not get satisfaction, they should then go to the Ombudsman's office if they are not satisfying their needs in the process.

Mrs. Meslin: Mr. Elliot, it is not even a matter of suggesting to them that they could go earlier. We cannot take it until they have gone the complete route. They must have the final decision. They must have done whatever appeal process is available within any particular agency. They must have completed that before they can come to us and we can take it.

Mr. Elliot: That was my understanding. I just wanted to make sure that I was doing that correctly.

Mr. Zacks: Some Canadian ombudsmen have the power to investigate in their legislation, notwithstanding a statutory right of appeal. We do not, but they do within either a totally limitless discretion to investigate or one where there is some overriding concern. There are those situations where they can, but we cannot.

Mr. Elliot: I think this point may have a great deal of bearing on the one case of extended jurisdiction that we are going to consider, namely, the children's aid societies, because if the office were allowed to get in at any stage along the way, because of the way it works right now, it could work to the disadvantage of the children. But to have the last call on health at the other end could be a very desirable thing. I think it is really pertinent to what we are going to be talking about.

Mr. Bell: I think it is equally pertinent in the area of public hospitals, particularly when you have regard to staff of public hospitals as private practitioners and members of the nursing and related professions. It is a very difficult matter to work through and identify areas where

jurisdiction will or will not kick in. It is subsection 15(4) that makes them wait until the process is finished, if what is being sought is compensation pursuant to the act.

Mr. Elliot: Right.

Mr. Mackenzie: I think the importance of the broadening is obvious when you look at a number of things. It sounds nice to make the argument that you have a choice, as I heard Mrs. LeBourdais doing earlier, but when you also look at the costs of going the court route on many things, you are really looking at a fundamental question of justice here and what people can afford. I think you can make a real case for having the avenue of the Ombudsman and the authority broadened.

Mr. Bell: There are lots of reasons for going to the Ombudsman and not the court. One that perhaps is not thought of quite frequently is anonymity. Anonymity is a two-way street—anonymity for the governmental organization as well. The Ombudsman can investigate and resolve a matter and it is a statistic in his report. Once you commence an action, it is a public proceeding and the positions are polarized and the trenches are dug.

Mr. Mackenzie: You are also into \$20,000 or \$30,000, beyond the reach of a hell of a lot of people.

Mr. Bell: That is right. The other thing is—I do not mean this as a criticism; it is a fact of life—that the civil section of the Attorney General's office represents this province extraordinarily effectively. One of the ways it does this is that it has an unlimited amount of money to defend an action. Very few people on the other side can say that. That scale, if you will, is balanced more evenly if the Ombudsman investigates, because while the Ombudsman does not have an unlimited amount of funds, it nevertheless has extraordinary investigative facilities and powers which are comparable. The dual or the election, if you will, is an important feature.

Let me just review with you briefly the remainder of this paper and then I will get into the background of why you are here.

What Jennifer has done for you in the remainder of the paper is to perform an interesting exercise I referred to earlier. It is to take the features of each of the areas and describe them in the context of any or all of the five tests. It is almost like a parlour game. You can each formulate your own conclusion when you review these features about whether, on current basis, the Ombudsman has jurisdiction.

Take, for example, the Ontario New Home Warranty Program. It is not established by a provincial statute. It is a nonprofit corporation designated by the Lieutenant Governor in Council. As far as I am concerned, it is established indirectly by a provincial statute. I do not think the concept of indirect has ever been visited.

The program's operations and payments of claim are funded entirely through fees payable by vendors, builders and new home buyers, but that is true for the Workers' Compensation Board. The corporation is authorized to pass regulations. It is authorized by law, by government, to pass regulations. It has independent decision-making powers. Yes, it has independent decision-making powers, but some of those powers are subject to appeal by a provincially constituted body.

It is responsible for interpreting and administering the legislation. The authority of the corporation is statutory, as we have said; the minister may revoke the designation and restrict the powers, etc. There is a ministry representative on the board of governors. Lastly, it must furnish the ministry with an annual report which is submitted to the Lieutenant Governor in Council and then laid before the assembly.

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It is not perfect, but there is an argument on both sides and Dr. Hill and his predecessor, Mr. Morand, really did not raise issues about jurisdiction. It was clearly acknowledged that they did not have jurisdiction over the program and proceeded to restrict their investigations only to those areas that were clearly jurisdictional as they related to the program. In other words, they investigated the ministry whenever the ministry became involved.

Children's aid societies: it is almost trite to say what its paramount purpose is, but it is worthy to say it. It is certainly a provincially assumed responsibility. Societies are not directly established by provincial statute, but under the statute they must be established. They are incorporated nonprofit; in general terms, 80 per cent funded by the province, 20 per cent by the municipality. It is run by an independent board of governors. They are not appointed by the Lieutenant Governor in Council. There are no representatives of the provincial government on any of the boards.

Although the legislation outlines the functions of the societies, they have additional functions which are outside the legislation; I am not sure that is the way we should have said it. They have powers that are inferred from the legislation, like running day care centres. Each society has considerable latitude in developing its own internal policies and procedures. The authority of the societies is statutory.

The minister has the overriding supervision and monitoring responsibilities and may revoke or suspend the designation, and can even take over a board of directors if the circumstances warrant it. Agencies must be approved and are supervised by ministry officials, the defined directors and program supervisors. They have to file financial reports. We have already talked about the funding. The bylaws must be submitted to the minister for approval.

Again, you can make an argument both ways. Let's not waste time with that debate. This Ombudsman has concluded he does not have jurisdiction over societies as such.

Public hospitals: you cannot start or run a public hospital unless it has been approved by cabinet. They are governed by independent boards of directors. They are responsible to administer the hospital and enforce the legislation; that is, the Public Hospitals Act. They develop their own internal policies and procedures. Staff are normally private practitioners.

One of the complicating features of public hospitals are those hospitals in Ontario that have psychiatric wards designated as a facility pursuant to the Mental Health Act. The Ombudsman already has jurisdiction in circumstances in that area that you are going to have to explain to us next week as to the extent, because it is important for the committee to understand next week completely what that jurisdiction is and where it stops within a facility. The interesting question is that if they have jurisdiction over some of the

operations in the public hospital, as in this way, is there a very big jump between that and the rest?

I have already told you about approval of incorporation in the use of public hospitals. Last, but certainly by no means least, the hospitals are funded through grants by the provincial government.

Mr. Elliot: Can I have a clarification on that last point. It says in the children's aid portion that 80 per cent of the funding comes from the provincial government. The implication could be read into that last comment on the public hospitals that they are completely funded by the provincial government. I think there are additional funds.

Mr. Bell: You are right; of course they are not. In some cases, they have extraordinary authority. They can raise their own funds. They have ability to fund-raise. They have ability to generate revenue from things such as parking facilities, the cafeteria, food facilities. They can charge costs for certain items or services that are not covered in the plan. No, we do not intend to advise you that it is 100 per cent, but I think the word "substantial" is appropriate, as the word "substantial" is for a society; 80 per cent is substantial by anybody's definition.

As far as I am concerned, one of the key elements under the societies and under the public hospitals is control. Under some of the Charter of Rights cases in determining to what extent the charter is applicable to government operations, degree of control is one of the factors that is considered.

Mr. Tatham: If, for instance, this took place with public hospitals, the granting of privileges, then medical staff usually get together with the board to say you may or may not have privileges. Somebody, if not allotted privileges, has access to review. When that review is over, if the Ombudsman took over, he would have a chance to explain that, would he?

Mr. Bell: Actually now, the Ombudsman gets his swing after a hospital appeal board makes the decision. In other words, if you said, "All right, Ombudsman, you have jurisdiction over public hospitals in the area of appointments and reappointments of staff," I am not sure, on analysis, if it would make any difference because subsection 15(4) of the act says you do not have jurisdiction while there is a right of appeal to be exercised.

I guess there may be a situation where a doctor would be refused his appointment, ultimately by the board of directors at the hospital, and would choose not to appeal to the hospital appeal board. Legally or technically, the Ombudsman would have jurisdiction to investigate that.

But for those that were appealed right through the process, he would have jurisdiction no earlier than he does now. I do not know what that means statistically. Statistically, I do not know how many doctors do not appeal to the hospital review board on a question of appointment or reappointment. In terms of impact statistically on the office, I do not know. We can speculate, I guess, or hopefully we will hear from some representatives of public hospitals on what it will do to the board of directors. I am sure there are both sides to that street too.

Anyway, why are you here, worrying about these three areas? Let me give you a little background, if I can, and briefly go back to 1977. Arthur Maloney back in 1977 came forward with a report to the assembly and your predecessor select committee recommending that he be given jurisdiction over the area of

municipal government—all functions of municipalities. That is an awfully broad brush. It included, of course, public hospitals, children's aid societies, boards of education, garbage collection, waste disposal and anything else. Mr. Maloney at that time had the benefit of extensive travel and study in the area of jurisdiction worldwide and presented a very scholarly, thorough, comprehensive analysis of why his office should be expanded.

The committee did not have comparable expertise and experience, so it decided to do some travelling and get its own. It travelled to various countries in Europe, Scandinavia and the Middle East where the ombudsmen in those countries, or some ombudsmen, exercised jurisdiction over local government matters.

The committee came back and said that, yes, there may be a case that could be made out to have an ombudsman function of overseeing local government affairs, but not the Office of the Ombudsman of the province of Ontario. That committee was not about to do anything further at that time. It lay dormant for a number of years, and in 1985, Dr. Hill in his annual report, visited again the question of expanded jurisdiction.

I think, in fairness to Dr. Hill, what he said in the report was misinterpreted. It was seen by, I guess, the media as an attempt to expand the universe for the benefit of his own office. That in fact was not the case. What he said was: "Ten years have gone by since the office was created. I think it is time to take a look at things. I think there is a need for expanded jurisdiction."

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The committee, when it considered the matter in general terms at that time, going back to its 13th report, said: "Yes, now it is the time to visit that question. We will undertake a thorough inquiry, including public hearings on the question." Your predecessor at that time posed three issues of fact that it wanted to consider as part of its hearings and deliberations: Is there a need for expansion to other provincially constituted organizations? If there is a need, what is the scope and who should perform that function?"

The committee also directed Dr. Hill and his office to prepare the position paper that I have referred you to earlier. That is September 1986. It is good reading. It gives a focus from the office's context of the three areas that he ultimately recommended with reasons why and some projected impact, although I think that will be revised as we proceed next week.

Dr. Hill made essentially two recommendations. He recommended that the area of the provincial Ombudsman's jurisdiction be expanded to the three areas that we are going to talk about. In so far as municipalities or local government generally are concerned, he recommended that the provincial Ombudsman's office not be expanded in those areas, but he urged the committee to consider other ombudsman models for local government. That is still an open question you are not going to visit in these hearings. I guess it remains to be seen when that question will be raised for formal discussion.

The committee, when it received that position paper, really distilled the original three questions that it put to one. I commend this to you for consideration over the next two weeks or at least to prepare your report; that is, should the Office of the Ombudsman as presently constituted have its

jurisdiction expanded into any or all of the three areas: the new home warranty program, the public hospitals and the children's aid societies.

If the answer to that question, to any or all of those three is yes, then to what extent should that jurisdiction be expanded? I guess it is predictable that you are going to hear positions on both sides of that question. By the review of the lineup of people who are going to appear before you, both from ministries and groups and the public, I think you will get a fairly representative view.

Mr. Henderson: There was some discussion and consideration of expanding jurisdiction to universities. Could you just take a second to say what became of that idea as well?

Mr. Bell: In his position paper, Dr. Hill did say that this does not exhaust the areas that might be expanded. Somewhere in here, around page 10 or 11, he says there are others. He names universities, but he says they are not a priority for the office. The recommendation, as I understand it, for the three is the product of a fairly thorough examination and reflection of the types of complaints they receive which they cannot investigate and the perceived need for some form of ombudsman function overseeing various areas in the province, and they settled on the three.

I think it is best left for Dr. Hill and others, either now or Monday, to tell you why the list is not larger than it is, except that they are the three priority items. It is his priority, it may not be yours and it may not be others.

Mr. Henderson: Are we limited to the three he recommended or not?

Mr. Bell: I do not think you are limited to anything, to tell you the truth.

Madam Chairman: I think we are limited just in that the deliberations that went on during our normal sittings in March, April or May defined it to be three areas; so we prepared and advertised on those three areas only for the next few weeks.

Mr. Bell: The focus is the three, and I think the expectation is a report on the three. To what extent you leave the door open for others is for you to consider and decide.

Madam Chairman: Just for the benefit of the committee, too, I think the inclusion of universities was interesting in that the Ombudsman does have power or jurisdiction over colleges, but not over universities. I think Dr. Henderson is aware of that, but others may not be. That is why we entertained that particular area for the Ombudsman.

Mr. Pollock: If you expanded jurisdiction over public hospitals, would that in turn take in district health councils?

Mr. Bell: No, I do not think so.

Mr. Pollock: What about boards of health?

Mr. Bell: I do not think so. Let me tell you what one of my problems is. How do you expand the jurisdiction, and how do you expand the jurisdiction without affecting the definition that the courts have formulated? Do you

recommend that there be a schedule annexed to the legislation and you specify these three areas? If you do that, what is the next step? I do not know. By putting three on, do you exclude others or do you open the door? One of the things I want to explore with Dr. Hill and others is how do you get it in. If you say, all right, public hospitals are hereafter, how does that keep out boards of education, for example? If you apply the control relationship test, I think boards of education may be closer than public hospitals.

Mr. Zacks: You have a conflict.

Mr. Bell: Yes, if you talk about boards of education, I have to get out of the room. Anyway, that is one of the things that you are going to have to address and your question, Mr. Elliot, focuses on it squarely.

Madam Chairman: Mr. Pollock asked that question. We know you will figure it out.

Mr. Bell: That is not what I meant. You know what I am getting at, Michael.

Mr. Zacks: Sure, I understand what you are saying.

Mr. Bell: In some other jurisdictions, the ombudsman's jurisdiction is determined by a schedule to the legislation and it lists the 375,000 various boards, agencies and commissions, so there is no doubt.

Mr. Zacks: If you look at the New Brunswick act, that is how they did it there. There is a general section in the act which establishes jurisdiction similar to what subsection 1(a) does in our act. Then it enumerates other bodies which come in, such as public hospitals, municipalities and others. That is how they have chosen to do it there. But New Brunswick is an extremely unlitigious province with respect to ombudsmen. I do not think there has ever been a court case in New Brunswick, unlike Ontario.

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Mr. Elliot: I would like to comment on the board of education comment of a moment ago. I see a real distinction, because it is an elected body as opposed to a hospital board being an appointed group. I think there is a real distinction there, which should be noted as leaving the boards of education out, because my reaction is through the control the Education Act and the regulations have vis-à-vis boards. My point is, though, that if all of a sudden the Ombudsman has jurisdiction over something called public hospitals, knowing their relationship with Ontario, then somebody might make an argument, "Hey, the relationship is quite comparable with boards of education; so how about those too?"

Mr. Bell: I am sort of taking the broad brush. You and I have a conflict, Mr. Elliot.

Mr. Elliot: That is for sure.

Mr. Bell: What I would like to do with the three areas, rather than take you through the text, is spend time on the diagrammatic presentations that are at the beginning, first, dealing with the structure and organization and then with the dispute resolution mechanisms. If you turn to the second tab, the Ontario New Home Warranty Program, these two diagrams really distil

what is in the text; so there is little sense for today's purposes in duplicating. I am looking at the program's organizational chart.

You will recall we have already seen that the payment of claims and fees payable are entirely funded by vendor/builders and purchasers. One thing I neglected to add is that under the legislation it is mandatory for builders to be members, to be registered. It is a bit like the workers' compensation scheme. If you are an employer in this province and your employees are scheduled, you do not have a choice; you have to collect and pay and you can be assessed. In any event, you can see the organization. It consists of a board of directors, 14 in number, appointed by the association. Its chief executive officer is the president and registrar, who is appointed by the corporation. Its next management level is the corporate group. It has directors with very specific responsibilities, plus a manager of management information systems.

There is very little in that organizational structure, it would seem to me, that would attract the jurisdiction of the Ombudsman in terms of just how it is organized. What it does under the various duties and powers under the legislation is that if you give jurisdiction to the Ombudsman—and going back to subsection 15(1), the Ombudsman has jurisdiction to investigate any decision, recommendation, act or omission made in the course of the administration of a governmental organization affecting any person in his or its personal capacity—then presumably anything done by this corporation which affected a third party the Ombudsman could investigate.

That is true, by the way, of any ministry, one of the things that you may be interested in inquiring of the Ombudsman. Technically speaking, almost any decision, recommendation, act or omission done by the government of Ontario is under the Ombudsman's jurisdiction. I am trying to think of a personal example. Technically, I guess, if the Ontario health insurance plan notifies me that I have to pay a 20 per cent increase in premium for some reason, that is a decision which affects me in my personal capacity. Subject to the appeal mechanisms up through OHIP, I could go to the Ombudsman and complain about that.

If I am receiving workers's compensation benefits, and they hold my cheque back, for whatever reason they believe is legitimate, that is a decision that affects me in my personal capacity. I can go to the Ombudsman and complain. The potential of circumstances of a complaint is mind-boggling in terms of numbers. But if you ask the office, "How many do you get and what are the types," it does not get that type. So, with respect, I do not believe, certainly with this institution, that the floodgate argument is going to hold a lot of water, because while potentially everything it does or does not do is subject to scrutiny, in reality it does not happen.

If you turn to the next page, we have prepared a schematic on the dispute resolution mechanisms. This is the area that is going to spawn most of the complaints to the Office of the Ombudsman if jurisdiction is expanded. You can see it is essentially in three categories. On the bottom, left-hand side, under the "Vendor/Builder" heading, a vendor/builder makes an application for registration or renewal of that registration, and that is initially reviewed and processed by the registrar. He may refuse the registration renewal or he may suspend or revoke that registration.

On notice of appeal within 15 days, that is appealable to the Commercial Registration Appeal Tribunal. How does that work? Potentially, if a vendor is notified by the registrar that he is going to have his licence suspended, if

the Ombudsman had jurisdiction, the vendor could do one of two things. He could appeal immediately to CRAT and try to get that decision reversed or revoked. If he is unsuccessful, he can go to Divisional Court. If he does that, while not technically, I think in practical terms, the Ombudsman would not bother with that case.

He may, however, decide for whatever reason not to appeal to CRAT. He may go right after the notice of revocation or suspension to the Ombudsman, and the Ombudsman would investigate; or he may, after the decision of CRAT, decide not to go to the Divisional Court—and we have talked about the cost of litigation—and may go to the Ombudsman then. There are two areas, two levels under this category. In terms of combinations of circumstances, he may go on a refusal of registration, a refusal of renewal, a suspension or a revocation.

Under "Purchaser," the legislation contains certain conciliation provisions which may be requested by either the vendor or the purchaser. If there is a dispute, bear in mind the purpose of the legislation is to provide certain consumer protection to home buyers within a limit. Under the warranty provision, it is to a maximum of \$50,000; under the defects provisions, it is a maximum of \$20,000. For any purchaser of a home, as defined within Ontario, from a vendor/builder who is registered there is a fund which may certainly mitigate your circumstances, your loss.

Initially, a purchaser may request a conciliation. The conciliation process requires a decision rendered within 14 days. A purchaser, for example, may after conciliation, if unsatisfied with the result, go to the Ombudsman. However, the legislation further provides that if you are not satisfied with conciliation, or in any event, you can file a claim with the corporation for compensation, either for a breach of warranty or a failure to perform the contract.

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Again, a decision must be rendered, in the language of the legislation, "promptly." A purchaser, for example, unsatisfied with either the assessment for compensation or the decision whether to compensate, could go to the Ombudsman. Note further that a purchaser who is unsatisfied with the corporation's assessment of the loss and award or decision for entitlement can appeal to CRAT. That purchaser, if unsatisfied with the tribunal's decision, might go to the Divisional Court. In those cases, again, I do not think the Ombudsman, in practical terms, will touch it. But the person might decide not to go to CRAT because there is an expense involved.

You should know that on appeals to CRAT, the corporation assumes a position adversarial to the purchaser. It is an interesting concept, by the way. I guess, technically, counsel for the respondent on the appeal represents the vendor; in fact, counsel is counsel for the corporation. It costs money. Some people might, for good and sufficient reason, decide they do not want to go in when the scales are uneven, that they do not want to absorb the cost of legal counsel, uncertain of a result; so they may go, right after the corporation's decision, to the Office of the Ombudsman. It may be an interesting question to pursue, if the Ombudsman has jurisdiction, to what extent is that going to affect the workload of CRAT, or who cares? I do not know. I guess the corporation cares.

You are going to have representatives of the corporation appear before you. They have appeared before this committee on other occasions where the Ombudsman, by some ingenious method, investigated acts of the ministry and

made a recommendation which had the effect, ultimately, of the corporation paying. I would expect that the corporation would resist quite strenuously any notion of expanding jurisdiction to itself.

The other thing you should know is that the ministry does intend amendments to the legislation and the regulations. One thing, for example, is it is going to remove the power of the corporation to formulate its own regulations. Is this not the only so-called private corporation in Ontario that has the authority to make regulations and does not even need cabinet approval?

Mr. Zacks: That is correct.

Mr. Bell: The only other body I know in this province that has the authority to make regulations without cabinet approval is this committee.

Mr. Tatham: I wonder what are we talking about in dollars? Is there any dollar idea on what it would be to take on some of these things? We are talking about hospitals and children's aid. Does anybody sort of have an idea?

Mr. Bell: They are the people you are going to have to ask. I have already alerted them to that fact, that one of the meat-and-potato issues that needs to be discussed is: "Assume you have it for any or all of them. What is it going to cost you, or how many more people and how many more facilities is it going to translate to?" You are not going to get an absolute answer.

Mr. Tatham: No, just a general idea.

Mr. Bell: I think they will be able to give you some fairly reliable guesses.

Mr. Tatham: It costs you so much for an appeal or to investigate 1 or 2 or 10 or 20 or 1,000 or whatever.

Mr. Bell: They will do it on a case basis. By the way, the Ombudsman will not have to go back to school. We are talking about this jurisdiction. Investigating these types of cases is exactly the same as investigating others. In fact, it may be easier to investigate these than workers' compensation, for example. The only question is: "What is the likely impact to the current workload, and can that impact be spread among your current complement? If not, how many more?" You will hear from them on Monday, I think, on that.

The third area is the arbitration facility. The parties to the dispute may agree to have the dispute arbitrated. The arbitration is pursuant to the Arbitrations Act, and there is a right of appeal to the Divisional Court. I will be interested to hear from the Ombudsman's office, but it would be my view going in that it would not have jurisdiction over that process in any event because it is a private arbitration. Practically, I believe, it is rarely utilized, although we are entering the area of private dispute resolution in this province, and there is going to be a real direction taken, initiatives by government to push the public into more private dispute resolution. That facility may be more utilized than not in years to come.

Are there any questions on the home warranty plan before I turn to children's aid societies?

Mr. Elliot: Would you make some more clarification comments with

respect to the fact that a person in this situation, either a vendor or a purchaser, could go to the Ombudsman's office as opposed to going to CRAT? When I, as a layperson, read that this is an appeal tribunal, because of what we talked about earlier, that until all the appeals are exhausted, the Ombudsman does not have jurisdiction, there is confusion still in my mind about the difference between that kind of appeal and this kind of appeal tribunal.

Mr. Bell: Maybe Mr. Zacks can expand on it further since he works with it much more than I do. In clause 15(4)(a), which is the right of appeal or objection, the focus is the phrase "right of appeal," and right of appeal expires when the limitation period for taking the appeal expires. Both judicially and otherwise, this section operates to exclude the Ombudsman's jurisdiction so long as there is a right of appeal.

If you look at the diagram for the warranties plan on dispute resolution mechanisms, you will see coming up from both the vendor/builder and the purchaser a requirement, under sections 9 and 16 respectively, that you must within 15 days of the decision of either the registrar or the corporation request a hearing. That is another word for a notice of appeal. The Ombudsman's jurisdiction is excluded while that 15-day period runs.

As the office has told you, even though the purchaser might come on the first day and say, "I'm not going to appeal; here's my notice of waiving rights to appeal; start your investigation now," it will not until the 15 days have expired. Let's take it further. If the appeal is launched to CRAT, then again the Ombudsman does not have or will not assume jurisdiction until that decision is rendered. Then again, clause 15(4)(a) kicks in, because you have the 30-day appeal time for the appeal to the Divisional Court. Once that 30 days has expired, then the Ombudsman would have jurisdiction to investigate the decision of CRAT.

Just because there was a right of appeal does not exclude the Ombudsman's jurisdiction to investigate for all time. You cannot say to someone, "You had a right to appeal that a year ago and you didn't, so the Ombudsman can't investigate." That is the argument that had been made: "You have a right of appeal and that right of appeal hasn't expired. Therefore, you can't go to the Ombudsman." Does that help?

Mr. Elliot: It still does not help with respect to the thing I considered on the worker's compensation question. I thought Mr. Zacks very definitively said that until all the appeals in that kind of situation were exhausted, the Ombudsman could not get into the act. It seems to me that even in that situation, if a person wanted to take a solicitor to a hearing with him, he could. So there is a cost involved there too, if they choose to incur that cost. I still do not quite see the difference between that kind of process, where you get to an end point before the Ombudsman's office can kick in, and this kind, where there is an appeal tribunal where they can kick in before that opportunity is exhausted.

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Mr. Bell: You know what? Neither do I. Michael, can you help?

Mr. Zacks: Let me try to explain it this way. There are really two kinds of jurisdictional questions we deal with in the office. One is the jurisdiction over the organization and the other is the jurisdiction over the complainant. We can have jurisdiction over the organization, the Workers'

Compensation Board, for example, but not over the complaint because we cannot investigate until all the statutory rights have been exhausted.

We can have jurisdiction over the complaint but not over one of the organizations in the process. Take, for example, HUDAC right now. At this stage, we cannot investigate a HUDAC decision at any point, but we can investigate the CRAT decision. CRAT is a body that deals with complaints from a multitude of organizations at lower levels dealing with commercial registration.

Another example that might focus it more would be assessment complaints. We have jurisdiction all along the line dealing with assessment. We have jurisdiction over the assessor because he works with the provincial government; we have jurisdiction over the Assessment Review Board because that is a government organization; and we have jurisdiction over the Ontario Municipal Board because it is also a government organization. But until all those appeals are taken or the time for taking them has expired, we cannot investigate the complaint.

When the time period expires, we can investigate, but all along the line, if the complainant goes to the Ontario Municipal Board, we can not only investigate the municipal board's decision but also the Assessment Review Board's decision and the action of the assessor as well.

That gives you a sense of the scope of how we get involved in different types of complaints depending on the limitations of our jurisdiction over organizations and over complainants.

Mr. Tatham: I have a case in my own riding where a chap does not agree with the assessor but does not have enough money to go to court to fight it. So he lets the appeal period lapse and he can then come to the Ombudsman to go ahead?

Mr. Zacks: You have to be careful with assessments because some assessment complaints have to go to court. There is a right to go to court. Other assessment complaints deal with the level of assessment and go to the municipal board. If he stops the assessment at the assessment level, we can investigate the complaint, essentially regardless of what that complaint is, but if he does go to the courts, then we are limited. We cannot investigate the final court decision, but we can investigate lower decisions along the line, such as those made by the assessor.

Mr. Tatham: By the assessor. In other words, right at the assessment level.

Mr. Zacks: That is right.

Mr. Tatham: He appealed it once to a local board and got taken out. Now he can go further if he wants to, I suppose, but he has not got the dollars to do it.

Mr. Zacks: We could investigate, but what we could do would depend on the nature of the complaint.

Mr. Bell: OK.

Mr. Zacks: Does that help in terms of our perspective?

Mr. Elliot: The statutory part of it, I think, in each situation would be quite different; so you would have to be familiar with each individual case. I think that is the important part of it.

Mr. Bell: Could I ask you to turn to the third part now—the children's aids societies. In terms of organization and structure and of numbers of dispute resolution mechanisms or the exercise of responsibility by societies, this is the most complex of the three. We are certainly not going to visit it completely in the briefing session, and I would like to just confine my remarks to the two diagrams at the beginning. Again, they are a distillation of everything that follows, which I commend to you for reading at your convenience before next week.

As you can see in the first sheet, the organizational structure, starting at the top, the governing legislation is the Child and Family Services Act, 1984. That act, as with all such legislation, gives the minister the overriding power and responsibilities with respect to the implementation of the act and the enforcement of statutory obligations, duties and powers under the legislation.

However, the minister is able under this legislation to delegate a lot of his responsibility, and he can do so to two statutory officers, the director as defined in section 5 and the program supervisor, again in section 5. They are both appointed by the minister. The director is responsible to advise and supervise all societies in Ontario. The program supervisors are responsible to ensure compliance with legislation and regulations. They are representatives and employees of the minister and are already under the Ombudsman's jurisdiction, so please note that to the extent that there is a decision, recommendation, act or omission of either or both of the director and the program supervisor in respect of any of their responsibilities relating to any society, the Ombudsman could investigate.

I think I have it right. The director could recommend to the minister, after an investigation of the activities of a certain society, that the minister take over the affairs of that society; and you know there has been precedent in Ontario in the last 10 years when that has been done. That decision could be investigated by the Ombudsman if there were a complaint, and the focus of that investigation would be the merits of the decision, which would include a review of the activities of that society, whether it warranted the action that was taken. So in an indirect, general way, the Ombudsman already has some jurisdiction over some things that societies do.

Below those two statutory positions there are the 54 societies. We have already seen that they are incorporated nonprofit bodies, and the funding is generally 80-20, unless there is not a municipal corporation in the area; then it is 100 per cent funded by the province. A society is run by a board of directors, by statute if that is required, as well as the statutory executive committee, which is established through the board pursuant to its bylaws. The board is appointed from members of the society. It is responsible generally for the governance of the society. Note that there is a stipulation of membership of the board. It must include four municipal representatives, and those same four representatives must be on the executive committee.

Again by statute, the board of directors must set up a child abuse review team. It reviews cases of alleged abuse and it offers recommendations to the society.

Again by statute, there is the requirement that serving under the board

of directors there be local or executive directors appointed for each, and that office is responsible for the administration and enforcement of the Child and Family Services Act. You will also note in the legislation that there are certain stipulated educational requirements for such an office. Then under that you have the internal staff of the society. That is how it is organized.

If you turn the page—the heading of this page on mine is lopped off—it is "Dispute Resolution Mechanisms." The focus of the page is the box almost in the middle. It is on the societies, the board of directors, the director and the internal staff.

We start with a requirement under section 64. Each society, by statute, is required to develop procedures for the handling of complaints respecting the society's services. That is a review procedure. If anybody affected by something the society does complains, it must have an internal review mechanism.

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You can see that the review mechanism goes up to, ultimately, the director. The director has responsibilities regarding complaints about society services, adoptions, society removal from foster parents' care and child abuse register. The director is the one with the authority to decide to place a name on an abuse register. He has the authority, I think, to refuse to remove—no, just to place on. It is only one way. That decision may be appealed to the Divisional Court.

Just to take that one at a time, where the complaint review procedure of each society does not satisfactorily resolve a complaint, a person may take that up to the statutory director, who may do something. Now help me, Mr. Zacks. Do you not already have jurisdiction over anything the director does under those four categories?

Mr. Zacks: Yes.

Mr. Bell: For example, you have authority right now, do you not, to investigate a decision by a director to place or not remove a name from the register?

Mr. Zacks: Yes.

Mr. Bell: Provided the time for appeal to the Divisional Court is eliminated?

Mr. Zacks: Yes.

Mr. Bell: Then, members, the Ombudsman already has jurisdiction over everything you see under the left heading, "Director."

Madam Chairman: Mr. Tatham, you had a question?

Mr. Tatham: OK. Maybe a part of it has been cleared up. I suppose the reason a person would not go beyond the director to the Divisional Court is it is a matter of dollars. Is that the idea?

Mr. Bell: That would be one reason. The other reason is that they may be advised by legal counsel that there would be no chance of success on appeal.

Mr. Zacks: I have been reminded that we have taken the position that since there is no specified time limit provided in the legislation—

Mr. Bell: For appeal?

Mr. Zacks: For appeal, the appeal remains outstanding and we would not have jurisdiction until that right of appeal has been taken.

Mr. Bell: Wait a minute. Section 71 says you may appeal to the Divisional Court.

Mr. Zacks: Yes.

Mr. Bell: Do you not look at the Courts of Justice Act to get the 30-day time limit? There is no open-ended appeal to the Divisional Court that I am aware of in this province.

Mr. Zacks: There would be under judicial review.

Mr. Bell: Oh, no.

Mr. Zacks: Under the Judicial Review Procedure Act.

Mr. Bell: Section 71 says, does it not, "appeal to the Divisional Court," and do you not then look to the Courts of Justice Act? If you look to the Courts of Justice Act, then you have 30 days.

Mr. Zacks: That is right. That is what the Courts of Justice Act says.

Mr. Bell: Sorry, members.

Mr. Zacks: It is open to interpretation.

Mr. Bell: You are saying that in practical terms you have not assumed jurisdiction?

Mr. Zacks: No, we have told people that since there is no time limit, they have to go to court.

Mr. Bell: You might want to revisit that question.

Mr. Zacks: We might, yes. It is an opinion that may have been given prior to the revisions of—

Mr. Bell: Of 1984?

Mr. Zacks: Yes, of the Judicature Act and now the Courts of Justice Act. We have to look at it again.

Mr. Bell: Yes.

Mr. Zacks: But I think, for purposes here, you could argue that it might be, but the current position is that we would not.

Mr. Bell: OK.

Mr. Zacks: The only reason we have not really raised it again is we do not get that many complaints in that area.

Mr. Tatham: Have you ever done one of these?

Mr. Zacks: We have at least one complaint where that legal opinion was given, and that may be one of the reasons we do not get many complaints.

Mr. Tatham: They have gone to the Divisional Court and then come back to you folks?

Mr. Zacks: I do not remember the details of it, but I know we have looked at the issue. We have turned an individual down on the grounds of no jurisdiction because we interpreted the time period to be still available to go to the Divisional Court. We may want to look at that again.

Mr. Tatham: If I may pursue this, after Divisional Court, you could still come in. Is that right?

Mr. Zacks: We could. We could look at the practices and procedures of the director. We would not look at the exact decision the court has decided because, in our view, that would be tantamount to investigating and challenging the decision of the court. As a matter of practice, we do not do that, although I am not saying we could not do it. I am saying we do not do it. It is kind of a nice distinction.

Madam Chairman: I have two people who want to ask questions and I am just looking at the time. It is 11:56.

Mr. Mackenzie: It is not a question. I am just wondering if we are not getting bogged down with a bit of legalese here.

Madam Chairman: Yes. The first concern I have with this, and I have just been discussing it with our counsel, is that the main thing we are discussing here is whether we are going to expand into the jurisdiction of these areas. If we are, then I think the second question is that we have to determine at which point in the dispute resolution system we would like to recommend that the Ombudsman's jurisdiction start. We are getting somewhat bogged down with the second part, which stage in the mechanism, rather than the first of whether we want the Ombudsman to have that jurisdiction. I do agree with that.

Before I go to Mr. Elliot, it is now 11:57. I had anticipated that this would move along a little more quickly. I question whether Mr. Bell is going to have the ability to finish children's aid societies, public hospitals and these statistics in 30 minutes now. I question that only because we have already been at it two hours and we are not even halfway through the material. I would like some direction from the committee as to what you would like to do. If I thought we were going to finish this by 12:30 or one o'clock, I would suggest that we press on, go till one o'clock and call it a day at that point, but I do not see that we are going to be doing that at this rate. It might be better if we take a lunch break and come back at two. I do not know.

Mr. Mackenzie: If it can be shortened enough to finish it by 12:30, I would much rather do that.

Mr. Bell: I do not intend to do the statistics today. They are not mine and I am not going to be the first one to make a mistake on those. That is for Monday at least. I can shorten it by giving even more of an overview. You all know what public hospitals are. You can all read the material.

Madam Chairman: How about if I suggest that we press ahead, and if at 12:30, it looks as if we are still not going to finish, then we reconsider this, if that is acceptable?

Mr. Elliot: That is a good suggestion. Because of other scheduling and things, I think it would be good to finish at 12:30 if we can, but I wanted to advise the Ombudsman group that in your discussion with respect to the children's aid societies, I would be very interested in your comments with respect to possible overlap with the office of child and family service advocacy because, in checking that function out, there seems to me to be a lot of potential for duplication between your office's function and that office's function. My understanding is that it operates very well and it seems to do the same function as your office.

Mr. Zacks: Do you want to deal with that now or on Monday?

Mr. Elliot: No. I would rather it be deferred, because of the time restraints today, to your presentation on Monday.

Madam Chairman: Mr. Mackenzie, was your comment solely on the technicalities? Did you have anything else?

Mr. Mackenzie: No.

Mr. Bell: Members, we are still with the diagram re the societies and dispute resolution mechanisms. Let me give you more of the overview.

Obviously, the box is intended to represent the operations of the societies exercising their duties, functions and responsibilities, as they are enumerated in the material. As you know, the primary focus is that which is in the best interests of children in this province in terms of protection—in some circumstances, detention—adoption, record-keeping and the like.

1200

Please note that there are, by the legislation, five areas where decisions or activities of the society may be reviewed upwards. We have looked at the one, the director. Then there is the minister, the most important and the most overriding area where activities of the society may be reviewed upwards. In a practical way, there is the Ontario Association of Children's Aid Societies, although I do not think you need to concern yourself with that for jurisdictional purposes.

Mr. Elliot has just referred to the office of child and family service advocacy. It has been described as the children's ombudsman, protecting under the legislation both children's rights and representing children who are hard to place. The question is raised, how is jurisdiction exercised in that way, parallel, concurrently or as a vehicle for overseeing the affairs of that office?

The next avenue up for review is the Child and Family Services Review Board, having to do with adoption records and other records, etc. Then there is the residential placement advisory committee, which reviews residential

placements; both on a mandatory and a discretionary basis. As I have said before, I do not think we will bog down with it now, but the Ombudsman already has jurisdiction over the various boards that are appointed by the statute and meet the jurisdictional test; so it is not a question of considering whether for the very first time the Ombudsman is to have jurisdiction over society affairs. You are really talking about the question of degree. Should all the affairs at the very first level of the society, regardless of these mechanisms, be placed under the jurisdiction of the Ombudsman?

You will be hearing from representatives of the Ministry of Community and Social Services next week, and the Ontario Association of Children's Aid Societies will be appearing before you with respective positions; so you can visit any of these questions with them.

Would you turn to public hospitals. Again, I would like to confine comments to the two diagrams at the beginning, which are intended as a distillation of the text. On the first page, under the structure of public hospitals, you will see from the top down that there are the inspectors, investigators and hospital supervisors, who are designated by the minister and the Lieutenant Governor and have overriding inspection and supervision responsibilities of hospitals; and also the Minister of Health and the Lieutenant Governor in Council, who approve applications for incorporation, proposals for additions, etc., and bylaws for the board of directors.

Then there are the 223 public hospitals in Ontario exercising duties, powers and responsibilities under the Public Hospitals Act. They are funded, although not totally, through grants from the province through the Ministry of Health. Hospitals are run by a board of directors selected by the hospital corporation. In an administrative way, the hospital is run by the chief administrator and the staff thereunder. What is unique about public hospitals is the staff of the hospitals. They are, in the medical context, private practitioners. Although they are appointed by the board of directors, they are still considered private practitioners, the exception being the chief of medical staff and the partial exception being department heads. As well as the medical staff, there are the other health care providers, the nursing staff and other members.

One of the questions is: If jurisdiction is to be expanded, is it to be expanded over all of the actions of all of the people seen on this chart within the hospital setting? Taking it right to the heart of it, is the Ombudsman to have jurisdiction to investigate a complaint of someone concerning an operative procedure?

It certainly is performed in a hospital and certainly, in part, by staff employed by the hospital, although the surgeon in charge would be a private practitioner. Again, there are one or more other bodies with responsibility over that, the College of Physicians and Surgeons of Ontario, for example, and through it the Health Disciplines Board. There are some difficult questions you are going to have to deal with and raise with various of the people who appear before you.

Mr. Tatham: Do you have information on what other jurisdictions do?

Mr. Bell: Yes. One of the purposes of the committee's travelling to Manitoba and New Brunswick is that both of those provinces have jurisdiction over public hospitals. I know the committee will be interested in hearing from the people whom you are going to meet with there. Where is the line drawn and how do you cope with it?

On the second page, under the dispute resolution mechanisms, we have omitted a category—and I must tell you I omitted it deliberately. We could have created a fourth category here of a patient who has a complaint of some sort with some hospital procedure and what the recourse is. I think, in general terms, the recourse is an informal one right now, short of access to the courts.

In most hospitals, they are called various things, but they have complaint officers. They are their own internal ombudsmen. Some of them are so sophisticated they anticipate your complaints. My son was a day and a half late for surgery at the beginning of July. When I opened the mail on Tuesday of this week, I got a letter from the chief of the complaints office explaining and apologizing for the day and a half. I did not even lodge a complaint. That is one example. Again, is the plan that the Ombudsman should have jurisdiction over that type of matter? I do not know. We will have to hear from them and discuss it with others.

Regarding the dispute resolution mechanism, we have already looked at the route up vis-à-vis the physician for appointments or reappointments. I am going to leave the Mental Health Act mainly because I do not fully understand what the Ombudsman's jurisdiction is in that category. I am going to leave it to them.

Regarding the 53 hospitals in the province that have mental health facilities, the Ombudsman does have jurisdiction over those. You will hear what that jurisdiction is, although I would anticipate it has something to do with the review board's involvement. I am going to forget about it. He is shaking his head.

It is further complicated because the Criminal Code has relevance in certain mental health facilities in Ontario, the Criminal Code being a federal statute, etc., and the review board having certain authorities there.

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The question under those two categories is to what extent do you have jurisdiction now and to what extent are you seeking additional, and how does that impact on the remaining question of other hospital operations.

I think that is probably, on an overview, as far as I need to go. What we are preparing for you and will have by Tuesday is a list of suggested areas that you might want to review with the various representatives dealing with the three groups that are going to come before you. They will focus on some of the text and some other areas we have thought of. But for the purpose of a briefing or just an introduction to what is to come, and subject to any questions you might have, I think your focus is probably going to be more on the policy level than on the meat and potatoes level, although this gives you an idea of the three models and what the impact might be, both from their perspective and from the Ombudsman's perspective.

Unless any members have any questions, that is about all I am good for today.

Madam Chairman: Just two things I have. I wonder if it would be appropriate for legislative research to prepare any particular highlight of issues or questions that might be appropriate for us to ask the ministries when they do come forward; highlight a few areas, anticipating some of their arguments, that we might get a way around. And also within the dispute

mechanism, where the key points might be, so that we can ask them that question and they may be able to respond to us.

I just wonder if that would be of any assistance to the committee at all, in particular to the three ministries. I am thinking not with any bias in mind, just in terms of assisting us in dealing with them here and asking, at the very preliminary stages, some good questions that might elicit helpful answers. Would that be a bit helpful?

Mr. McLean: I agree with you. I think that would be an excellent idea, if it is possible.

Madam Chairman: We will see if any of that can be highlighted. This is good, but I just wonder if it puts out any issues that are glaring so that we might want them back or say, "Oh, we did not ask them that particular question," as we wound up.

The second question I have—and this is one from yesterday actually; it is a recollection, and I could have asked you privately about it—is on your section 22(3) letter in all the cases that were before us in the past couple of days, I noticed that they had a great outline of giving notice of the procedures and of not introducing new evidence. Although it seemed to me that some people did not read that, it was there in the letter, and I felt very good about that.

I did see also, in the second or third last paragraphs in the letters, a reference by the Ombudsman that in fact not many cases go to the standing committee and the statistics of success for the Ombudsman in going to the committee. I think it said only eight went to the committee, seven of which were decided in his favour. I do not recollect seeing that paragraph before in the section 22(3) letters.

I just wonder what policy decision put that in now. It might have been in the old letters, but I got the feeling that it was a bit intimidating perhaps, "You better resolve it, because the committee will probably decide in my favour." Was there any decision made? I just read it and it came out and it stuck out.

Ms. Morrison: I think that paragraph was there partly to emphasize that very few cases actually do get to the committee. As I said when we were in hearings yesterday, the percentage is just minute. You see half a dozen cases a year.

I do not think it was intended to be intimidating so much as to suggest that ministries should not wait for the chance to deal with the matter at the committee. It was kind of a continuing on of the arguments above, which say: "Give us your information now. If you have it, this could be resolved." I think the intent of the paragraph was to indicate that was a very important thing, that we get that information. But if the committee feels it is inappropriate, we could certainly modify it.

Madam Chairman: Did anybody else read that paragraph and have any feeling?

Mr. Mackenzie: I just wondered why they were not stronger. They obviously were not getting the information, when you read the letter.

Mr. Campbell: The thing that concerned me about that whole thing was the notion—and I know you are not doing this—that maybe in the perception of the public, you are just picking the cases that you think you can win. I do not want to say that in that way, but that is the only way I can say it. That was my concern in all of that. Although I am new to the committee, I just was not sure about the policy decisions you made, but it seemed, the way it was written, that in the public's mind, it might be we are just taking cases that we think we can win. I know that is not your conception.

Ms. Morrison: Which—

Mr. Campbell: The number of cases that were taken. I do not know if it was in that specific reference, but somebody made it. Very few cases come to the committee, and they may be ones that you might win. I am not saying this well and I apologize to you, but there may be a perception that those are the ones you take.

Ms. Morrison: First of all, that letter just goes to the ministry. That is a ministry letter, not a public letter.

Mr. Campbell: But in this committee it becomes public.

Ms. Morrison: Yes, it does in committee hearings.

It is true to some extent that what happens in our process is that if the matter is not resolved to our satisfaction, it comes to the committee. To the extent that the Ombudsman has a choice about what is an adequate and appropriate response to our complaint, he brings the ones to the committee in which he feels their response has not been adequate and appropriate. This means he does choose the cases in which he feels he has a strong reason to believe the government's position is unreasonable and will be found to be unreasonable by this committee. That is the process.

Mr. Campbell: You have clarified it for me. That is why I was very careful in my choice of words. I was trying to be careful. But it would be the public's perception that the underlying reason— Maybe what I am asking is that you could strengthen the thing by saying what you just told me, because it was not as evident. Maybe that is the way around it, just the simple fact that they are there for these reasons, but maybe you have not amplified them. Maybe that is the way to do it.

Ms. Morrison: We did not intend to sound threatening or to sound as if we were—

Madam Chairman: "Settle now because the committee is going to decide against you anyway." That is how I interpreted that paragraph. It was just a little different than I had seen before and it did rear a certain feeling when I did read it. In fact, I did recollect that we did decide seven out of eight in favour.

Mr. Elliot: I would like to comment on paragraph 2. Mr. Bossy and I had quite a discussion relative to this two days ago. We share Mr. Mackenzie's concern that there be a very firm—probably firmer—statement of what you just said to us, at the end of the letter. But quoting the statistics and that kind of thing, we found to be objectionable. I think just say something to the effect that very few come before the committee and "If you finally have any further information, make sure you get it to us before it comes to the committee." We obviously have been reacting to new information quite violently on your behalf.

Mr. Tatham: Maybe you could say it, but just do not threaten them.

Madam Chairman: Yes. I like the idea that they know that a very small percentage come to the committee and that you are really adamant about this one. I guess what I found a little different was the success rate right there, blatantly. I found that a little different.

Mr. Tatham: That is not bad. If you won, you won; if you lost, you lost. If we took 10 and we lost eight, you have a pretty good chance. But if we took 10 and we won eight, you do not have much of a chance. But try your luck. I cannot get too sweaty about it.

Mr. McLean: I just found that in most of the cases, if the information had been supplied by the ministry, they would never have got here. That is why it looks like they win most of them. The fact is they have never supplied the information. If they had, they would never had got to this stage.

Madam Chairman: I just mention that as a point of discussion. Maybe you can have some more thought about it. There are different views on how to read that one paragraph.

We will resume on Monday at one o'clock in room 151.

The committee adjourned at 12:20 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
EXPANSION OF OMBUDSMAN'S JURISDICTION

MONDAY, AUGUST 15, 1988



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Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella
Tatham, Charlie (Oxford L) for Mr. MacDonald

Also taking part:

Philip, Ed (Etobicoke-Rexdale NDP)

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. Daniel G., Ombudsman
Meslin, Eleanor, Executive Director
Zacks, Michael, General Counsel
Morrison, Gail, Director, Investigations
Van Kleef, Joy, Assistant Director, Investigations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Monday, August 15, 1988

The committee met at 1:05 p.m. in the Amethyst Room.

EXPANSION OF OMBUDSMAN'S JURISDICTION

Madam Chairman: We will call the meeting to order.
Good afternoon. Welcome back.

We have before us today the Ombudsman, Dr. Hill. I understand you are going to do a few opening remarks and then press ahead with the expanded jurisdiction question and, in particular, the Ombudsman's view and what you have experienced over the last little while. I know we have a number of materials you have put before us, and I am sure you will explain that for us.

The other thing, just for committee members, is you have now a revised agenda for this week before you. We are in Toronto for the entire week, and if you have any questions, please do not hesitate to raise those.

Dr. Hill.

Dr. Hill: Thank you, Madam Chair.

I am just going to make a very brief opening statement, and then my executive director, Eleanor Meslin, and general counsel, Michael Zacks, will be presenting material in full for your edification.

As you are aware, in September of 1986, I presented to this committee a paper concerning the general question of an expanded Ombudsman jurisdiction in Ontario. In that paper, I set out background materials for the consideration of an expanded jurisdiction, described some of the problems which come to the attention of my office and which I cannot investigate and tried to estimate the impact upon my office of expansion of my mandate to cover certain areas.

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It was not my intent in presenting you with that information nor is it my intent today to persuade you to any particular action. Rather, I wish to provide you with the information necessary for you to make a considered decision as to whether or not the Ombudsman's jurisdiction should be expanded.

If you do decide that an expanded jurisdiction is appropriate, you will have to consider which areas could most benefit from an Ombudsman's review. I have provided my own thoughts on some areas and have attempted to show the effect jurisdiction over these areas would have upon the work of my office.

My estimates are by necessity only general approximations. It is not possible to know the effect of possible Ombudsman review in a particular area as complaints will increase in an unpredictable way once people know that the Ombudsman may consider their problem. We will no doubt need increased staff and budget, and these are matters which must be considered by the committee in making its decision.

I have asked my staff to present to you today detailed information about our present process so that you may assess for yourselves the impact additional investigative responsibilities might have on our ability to serve the Ontario public. They will be pleased to answer any questions you may have, after their presentation, and to provide further information that you require.

Thank you, Madam Chair.

Madam Chairman: Thank you, Dr. Hill.

Ms. Meslin, are you going to be conducting the presentation?

Ms. Meslin: Yes. I do not think this mike is working, but is this one working okay if I put it on?

Madam Chairman: You can leave it off as long as they can hear.

You even brought us fancy charts.

Ms. Meslin: Yes. The committee indicated that it wanted our office to address two items in relation to expanded jurisdiction. One was a brief overview of how the Office of the Ombudsman operated, and the second was how the office would cope with any expanded jurisdiction. I have separated the briefing today in the following manner:

Number one, I will briefly outline how the office presently operates, and by that I mean very briefly. Many of you had the original briefings when you came in as members, but for those of you who did not, I would like to fill it in going from the general to the particular and showing you particularly how we run through a case step by step.

Number two, Michael Zacks will update Dr. Hill's report to you of September 1986 and discuss our caseload and staffing estimates, both jurisdictional and nonjurisdictional in all three areas of your consideration.

And finally, number three, I will outline the possible staffing, space and administrative effects, including the budget ramifications, of expanding our jurisdiction.

Before I proceed, I want to introduce two additional staff members who have assisted me and will probably be assisting you very closely. One is Larry Brookwell, who is the manager of our computer systems and operations and has helped develop all of the statistics that John requested. Larry is sitting over there in the striped shirt.

And Dale Bryant, who is one of our land use investigators and has a great deal of comparative information on Ontario and Manitoba in terms of Children's Aid Societies, some of which we're going to leave with you today. Dale will be going with the group to Manitoba because he has done a lot of indepth work on Children's Aid Societies in Manitoba and Ontario.

You know, of course, Dale and Michael. I do not have to introduce them.

When we finish or during the course of this explanation, please feel free to interrupt us if we do not seem to be clear or you have some other particular questions.

So with that, I think I would like to go on unless anyone would like to ask any questions before we proceed. Okay.

I have drawn up an organizational chart to indicate to you -- let me turn this just a little because I do not think you can see it.

Can you see it over here if I stand to the side?

Mr. Carrothers: Sure.

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Ms. Meslin: I have drawn up an organizational chart just to give you some idea of the overall organization. As you know, the investigative procedure is really the centre of our life in the organization, and all of the various areas tend to support it to make sure that we function effectively.

At the top of the chart, the Ombudsman. My position, the executive director, is the day-to-day organizational person who sees that the functioning of the organization, both procedurally and administratively, runs effectively.

Now, under that, you will see a number of areas that support the director of investigations and the Ombudsman and myself. Michael Zacks, our general counsel, has under his jurisdiction all of our legal counsel, including the articling students. And the legal counsel are assigned to various teams, investigative teams, to assist, as if they were lawyers in a law firm who can be utilized for legal advice, legal memos and guidance to make sure that we are not straying legally out of our regular path.

The controller is the person, of course, who handles our money, our budget, makes sure that we stay honest and we do not overspend once we have been given the budget. And under the controller is the administrative area. That is the manager of administration who runs all of our support staff, purchasing, records, et cetera.

We then have an accounting section, it goes without saying. An assistant section, which is Larry Brookwell's, and has to do with all our computer data and statistical background.

The publications area and educational area is a two-person area. We have a director of publications and communications, and we have a coordinator of community relations. The distinction is that the director of publications and communications, of course, is responsible for producing all our brochures, our annual report, liaising with the media, assisting Dr. Hill and any other members of the staff with speeches or public appearances.

The coordinator of community relations is the person that makes sure that our development of community outreach on a broad basis is handled. She is the one that organizes community meetings, that liaises with MPP's on community relations matters and liaises with various community members.

Over on my far left is director of regional services. That is the individual that runs our field offices and our district offices across the province. And as you can see, the director has the responsibility also for our Native Program. We have two native programs officers at this time, one based in Toronto and one based in Timmins.

The supervisor, field services, handles the individual staff people who at one point were just part-time people and who recently have been made full time. They are single individuals who were at one point working out of their homes. Some of them are now working out of one-person offices in the communities of North Bay, Windsor, London, Sault Ste. Marie.

The district offices are our regular office structures that have a district officer and an intake officer, two-person offices. And they are located in Kenora, Thunder Bay, Ottawa and Timmins.

Now, to our piece de resistance, and that is the investigative process. What I want to do is, you can see from here there are assistant directors in various areas. What I would like to do is be a little more specific and ask you to take a look at the sheet we have handed out that has no title but has "Intake and Information, Labour and Psychiatric Institutions," et cetera. And I am going to spend a few minutes just telling you a little bit about the investigative teams.

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As you know from hearing our recommendation denied cases, Gail Morrison is the director of investigations, and she is responsible for seeing that all investigations, all our jurisdictional investigations and all of our intake information and nonjurisdictional complaints are handled.

The sheet that you have in front of you lists the number of staff assigned to each of the teams. The teams are

divided, as you can see, into policy groups, and what I have tried to do to give you some snapshot of them is list under each team those policy areas that the teams are responsible for so that you can get some sense of the way in which we operate.

The labour and psychiatric institutional team does generally labour, employment, psychiatric hospitals. And, as you can see, that might be the team that the psychiatric wards of hospitals fell under if that is what happened, if that is the way we designated it.

Each team has an assistant director, legal counsel, as I said, assigned to them, a number of investigators and investigative researchers. The term researchers is a bit of a misnomer. It is not a researcher in the common, regular sense of the word. It is the person who generally receives the complaint in its initial stages and tries to do all of the preliminary work before a 19(1) goes out to do the investigation.

Each team, as you can see at the bottom, has a support group. They have an administrative secretary, who is the person that handles all of the regular records, typing, makes sure that follow-ups are done, et cetera. And then they have two WP operators, one or two WP operators, depending on the size of the team.

The team that appears to have a great deal of policy areas, the social benefits team, as you can see, has all the health and health related, education related, and in a couple of cases we have transferred a few of the odd teams. It looks like an anomaly when you can see something like public trustee. Some of the transfers within teams have been made only because other teams have been overburdened and we have tried to move some of those from one to another.

Under the social benefits team, you would attach Children's Aid Societies and perhaps hospitals other than the psychiatric wards. Now, I am only putting them there just so you can see how they fit in the spectrum. There certainly is a possibility that if we got expanded jurisdiction into hospitals, we may have to develop a team all by itself which would be unrelated to these four teams.

The justice and licensing team, as you can see, deals with all the areas of justice and places like Liquor License Board, Liquor Control Board, Racing Commission, et cetera, and they also have Rent Review, which would normally be in the land use team because land use does have housing. But we have sort of shuffled it around a little.

The land use resources and revenue team is our dumping ground. The only reason I say that is when we tried to divide teams into policy groups, we had a whole bunch of odds and ends, and we put the odds and ends in land use. And although they have their regular ones that would normally fall under them, like agriculture and environment they do have a few odds and ends like revenue and transportation and communication. That is the area that the

Ontario New Home Warranty Plan would fall under if we subdivided it.

Two other points I want to make about this chart is that at one point, about two and a half years ago and prior to that, we had a fifth team that was called corrections, and they dealt with all of the institutions, correctional institutions in the province. Over time we decided that we could better serve the correctional ministry and do a better job if we took our correctional investigators and spread them through the four other teams. We have correctional investigators in each of the teams who specialize in corrections, and we find that the way in which they work melds better by being separated out than being in one unit.

The other thing I want to draw your attention is, on the far left, there is a section called "Intake and Information." And although it may appear to be self-explanatory, that is the first area where all of our complaints end up. This intake and information team has a dual responsibility.

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One, it assesses, it takes a look at things, and things that are definitely nonjurisdictional, it handles. It has investigative researchers and intake officers that handle all of the nonjurisdictional complaints, either by referring them on somewhere or by trying to solve the problem just by telephone on their own. They also will, if they assess it and it looks like there is a possibility that there may be a jurisdictional aspect or that it is a jurisdictional complaint, they will send it up to Gail or to the particular teams they think it fits in with.

We have recently, with the break-up of our corrections team, we have developed a new system of handling corrections because most of the institutions now have put telephones in the institutions so that inmates can use telephones to call out. Since that has happened, our telephone system from the institutions has grown so large that we have set up a special unit in the intake and information area specifically for correctional telephone complaints.

What we try to do, instead of going out there automatically in order to, first, save money and, second, service this constituency more quickly, we try to see if we can handle the problem on the telephone. If it is something where we just have to phone the superintendent, we do so. If we have to refer them to the superintendent or if it is just a small problem that we think we can get the answer to and call them back, we do so. That particular area has taken a great jump upwards, and I think we have really been able to service the institutions in a much better manner than we might have before.

Now, that is the general picture. What I would like to do is I have one more little chart to show you, and that is a simplified chart of how we handle a case, a complaint I should say, that comes in.

This is a very, very simplified chart, but I would rather you just get a snapshot picture than go into too much detail.

At the very top of the chart is intake. Case comes in. There are two diagonal lines flowing left and right. The short line out of intake on the left says "jurisdiction," i.e. jurisdictional complaints. The one on the right, "NJ," nonjurisdictional complaints.

Now, the easy one, of course, is nonjurisdictional. It looks a lot easier than it is. In simple terms, it means that what we try to do is we refer it on to someone that can handle it; if it is municipal; if it is federal; if it is nonjurisdictional. Or if it is something that we feel we can do quickly on the telephone, just to assist, like phone because someone's Unemployment Insurance check has not come in, we will phone Unemployment Insurance. We will do the footwork. It takes us five minutes. The complainant probably would take an hour and a half to find the right person or get a good response.

So nonjurisdictional, although they look like they are in and out, can in and of themselves take a little bit of time and effort.

Jurisdictional, we take a look at it to determine if it is jurisdictional. After having sent out the proper notification to the ministry, we begin our investigation. The investigation can involve something as simple as a phone call or something as complex as doing legal research, going out and interviewing witnesses. We do get all the files from the particular ministry involved. We look through them; we read through them; we discuss things with the ministry. We try to get a complete understanding of what the situation is, what the case is all about. We speak to anyone we think may have something that will assist us in determining whether that complaint has some merit or not.

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After we have got all our information in, assuming that our investigator feels that there is some merit in the case that should be brought to the attention of the Ombudsman, we bring it to what is called a case conference. And at the case conference, we have the Ombudsman, myself, general counsel, director of investigations and the particular investigator who is bringing the case discussing the evidence they have, putting before the Ombudsman the situation, listening for any questions that the rest of us may have to see whether we feel they proceeded far enough, whether we feel that something more should be done.

The Ombudsman looks at it and decides if he wants to take it to the 19(3) stage, which is, of course, where we give tentative conclusions and recommendations. If he says "Yes, I would like to do that," it will proceed to 19(3). If the investigator feels that there is not enough merit in it and recommends that the Ombudsman not support it, the

Ombudsman reads through it, takes a look at it, decides he is not going to support it and issues a nonsupport, and the case is closed.

If, as I say, we are on to a 19(3), off it goes to the ministry or the board or agency. We wait on them to tell us why they think we should not finally recommend what we have suggested. It comes back. The investigator, in that instance, may have to do some more investigation because the ministry has given them information they did not have, or the investigator may look at it and figure there is something more to it; they want to adjust the recommendations or conclusions, whatever.

It will go back to a second case conference because it has to come before the Ombudsman again, and if it comes before the Ombudsman and the committee, we take it apart, put it back together again. And then the Ombudsman makes a decision whether he is going to continue to a final report, and if he does, it goes on to what is called a 22(3), and that is where our final report is issued.

It may well be that after that goes out, the ministry or board decides that in fact they are going to do what the Ombudsman asked them to do. They let us know, and the case is closed. If they decide they are not, we have what you people are very familiar with, recommendation denied case. We let the premier know; we let the complainant know, and then we let you know that you now have a problem.

We have indicated here beside premier that the case could be closed, and that is if in fact the premier were to decide he did want to take an active role. He does not or has not up until this point; he has assumed you people act for him. So he just passes on the notification of the case, the report we give him, and says, "I note it, and the Ombudsman's Committee will look at it". The standing committee receives it; and the rest I think is history because you are quite aware of what happens in that case.

So that is it, in a nutshell, without all of the bells and whistles, what we do and how we do it.

Now, are there any questions about the way in which we move along? I think most of you are familiar with it. I do not think it is news to you.

What I would like to do now is I would like to turn it over to Gail because she is going to just give you a more individual snapshot of a Children's Aid Society case and how it comes in and the thinking process as an investigator would go through the exercise.

Gail.

Mr. Bell: Before you do, can the committee then take it, if we look at the current investigative organization, as I have labeled this chart, and you have placed the three areas, two under social benefits and one under land use resources, et cetera, do we take it as a given that as far

as the current Ombudsman is concerned, if his jurisdiction is expanded to all of these areas, he does not see any substantive need to reorganize the current investigative organization?

Ms. Meslin: No, that is not so. All I did was attempt to show the committee where they would fit in in terms of policy groups. I think that, depending on what the Ombudsman got, if he got any of these, he would have to make a determination whether in fact he had to.

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For instance, I think there would be a lot of discussion if we got hospitals about whether we should leave them where they are within that policy group or should we develop a whole new section of the office that dealt with hospitals, you know, another policy area that would be hospitals, in much the same way as at one time WCB was a completely separate team, all by itself. It dealt with nothing else but WCB cases. Then, as you can see, WCB became fewer and fewer and fewer, and it has now become labour and psychiatric institutions. WCB has fallen into that group. So I think the same considerations would have to be given depending on what we got.

Mr. Bell: Will you or any member of your group be addressing that in any more detail?

Ms. Meslin: Michael will be addressing it in its detail by showing you what our estimated figures are and how in fact we think, what we think we would need in terms of staffing, et cetera, and then I will again address it.

Mr. Bell: I guess what I am getting at is whether Dr. Hill or any member of his staff believes that there are any substantive features of any or all of the three that would require special or individual treatment in your investigative operations?

Ms. Meslin: Not per se. I do not think so.

Mr. Bell: Thank you.

Madam Chairman: Ms. Bryden.

Ms. Bryden: Will you be able to give us a copy of that organizational chart, something that will appear in Hansard, without producing it --

Ms. Meslin: Yes, certainly.

Ms. Bryden: And a copy of this as well? I think it would be very helpful.

Madam Chairman: Any further questions at this point?

Ms. Morrison.

Ms. Morrison: I would like to just briefly make a

couple of comments about the Children's Aid Society, kinds of complaints that we could get before I talk about the process that we would use if we got a complaint concerning Children's Aid Society.

One of the things we need to note is that there are already in the legislation that has been presented to you by your research officer, you will see a number of routes of appeal. And those routes of appeal, either to the ministry or to the courts, make the Children's Aid Society a fairly unique organization with respect to possible jurisdiction by the Ombudsman.

I think a couple of things need to be kept in mind. Although we presently would have jurisdiction over, for example, the ministry's decisions relating to a Children's Aid complaint, that is quite a different thing than having an original jurisdiction over the complaint itself, because our review of the ministry decision would be a review of how the ministry had dealt with the matter, had they looked at it thoroughly, did they put enough resources into it, how even-handed was their investigation and so on and was their decision reasonable in light of the information they had? That is a fairly different kind of review than a review of original jurisdiction over the complaint.

And I think that in the matter of Children's Aid Society, there may often be an urgency which would not be met by having jurisdiction over a later stage of the complaint.

We presently have, in our office, in fact, an investigation, a Children's Aid investigation, which arises in our office because the ministry took over a Children's Aid Society and was running the Children's Aid Society itself.

In that kind of circumstance, we have this sort of original jurisdiction that we are talking about here, and we have been investigating the ministry's actions in running the Children's Aid Society. In that case we begin to see the kinds of limitations that we are subject to in terms of information and so on. The information that we are being able to obtain in that particular case only relates to the very period that the ministry has been in a supervisory capacity over the Children's Aid Society, and that may not be, in many circumstances, a sufficient window of information on which to decide a particular complaint.

I think the other thing we should note is that there are a number of court remedies available relating to the Children's Aid Society, but that that would not necessarily mean that concerning the same sort of problem we would not be involved. We might, for example, be involved with an act or decision or omission of the Children's Aid Society which was relating to the court determination and which would be a jurisdictional complaint to us, even though some other matter were being determined by the court.

A couple of other notes. One is that there is, of course, an official guardian and an office of Child and Family Services Advocacy. I think one of the members of the committee raised the other day some possibility of conflict between our role as Ombudsman and the role of those agencies.

I think we should note and keep in mind that our role is never an advocacy role; that we are always an investigation, an impartial investigation. And, of course, the official guardian's role relates to mainly court matters. The Office of Child and Family Services Advocacy relates to noncourt matters. But in both cases it is an advocacy sort of process and not the kind of process an Ombudsman is usually involved in.

As an example of a complaint, we might have complaints by, for example, both foster parents and natural parents or one or the other about a child who is in a situation in which he or she is acting out or having behavioural problems. The foster parents might complain, for example, that they are not getting enough support, not getting counseling, not getting assistance in dealing with these problems. The natural parents may complain to us that there is some kind of neglect or insufficient supervision by the Children's Aid Society of the child while in the care of the foster parents.

In such a circumstance, we would, first of all, usually, as we would in any investigation, ask the complainant to contact the director of the agency involved to see if some kind of communication in that direction would resolve the problem.

As Eleanor has explained to you, the intake people and especially the investigative researchers from each team are very experienced at trying to find a kind of informal resolution to the complaints before we have to get too seriously involved. In this case, that might involve getting the complainant in touch with the appropriate person at the Children's Aid Society who could assist them in understanding the circumstances better or somehow provide them with, for example, provide the foster parents with assurance that there would be counseling, maybe set up some appointments or, in general, resolve their concerns.

If that did not work, then the complaint would be passed along to either an investigative researcher or an investigator who would draft what we call our 19(1) letter. That is the letter which you have seen in your recommendation denied cases by which we notify the governmental organization that we intend to investigate.

That letter would go to the Children's Aid Society, likely with a copy to the director and the minister in the ministry because of the various levels of supervision that there are over the Children's Aid Society.

In our usual course of investigation, we provide about

three weeks for a response to that notice of intent to investigate. It appears to me that in the case of Children's Aid Society complaints, that may not be appropriate; that Children's Aid Society complaints might be much more like interim assistance complaints, for example, under Family Benefits, where there is a real urgency to the matter, where someone is really suffering as a result of not being able to get some decision or some benefit, and it might not be at all appropriate for us to wait for the kind of time that we would wait in a more sedate sort of investigation.

In any case, once we have a response from the Children's Aid Society, or perhaps even before we would get a response if it were an urgent complaint, the file would be assigned to an investigator who would set up various appointments and meetings and file reviews to find out more about the problems.

For example, that investigator might meet with the foster parents, might meet with the natural parents, would meet with the worker at CAS, review the CAS files, probably find out what kind of counseling had been provided to the foster parents, find out perhaps if there were school problems, obtain school information, go to any person who might have information which would be relevant to a complaint under investigation.

Again, we stress, as we do in all of our investigations, the impartial nature of this inquiry. It is not an inquiry on behalf of the child; it is not an inquiry on behalf of the complainants. It is an impartial inquiry to obtain the information which is necessary to provide to the Ombudsman for a decision as to how reasonable the Society's actions had been in this particular case.

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As I say, it would probably be a matter of some urgency, and as soon as the information could be collected and written up in some kind of reasonable form, it would be presented to the Ombudsman if it looked like a supportable matter in the case conference that Eleanor mentioned on the chart.

At that point, a decision would have to be made as to whether some tentative conclusions and recommendations would be drawn as to the unreasonableness, unlawfulness, et cetera, of the Society's actions, and the matter would proceed from there as Eleanor has described for any normal complaint.

Madam Chairman: Mr. Campbell.

Mr. Campbell: I have a couple of questions on what they have outlined with the Children's Aid Society specifically and a couple of others.

The first one is how would you see the role of the Child Advocacy Office in your investigative work duplicating or not duplicating? I would like you to comment on how you

would see that system working in tandem with that office.

Ms. Morrison: As I understand it, the Child Advocacy Office is there to provide an advocate for the child or an advocate for someone on behalf of the child. That is not our role at all. So someone from that office could perhaps direct a complainant to our office. But they do not investigate in the same way we do, in the same impartial way. They are much more like someone who is required to find all the facts in favour of their client. They are much more an advocate than we are.

Mr. Campbell: If I might, Madam Chair.

In seeing that, though, the way you outlined a hypothetical case or probably with your experience with the CAS where the ministry took over in Kenora, the situation would be that if the Child Advocates Office is advocating on behalf of the child and using the scenario you used where somebody is in a hard-to-place situation or that they are not appropriately placed, that would be their role, I would assume. What would be left for you to do once -- how would you make the decision in a hard-to-place case that professionals in the field have already done through the Child Advocate Office?

Ms. Morrison: I think the kind of decision or act or omission we might be looking at might be quite different from the role that the Advocacy Office is playing. They may be providing for the child or on behalf of the child someone to advocate in particular circumstances, whereas we might be much more, and I think we would be much more looking at the overall picture, looking at the files to see what actions had been taken over a period of time, looking at the reasonableness of the Society's actions rather than advocating on behalf of the child in any particular forum.

Mr. Campbell: I will leave that line of questioning for a moment.

I would like to deal with a couple of questions under this social benefits column. When you are reacting, for example, to education/educational benefits, education/student complaints, is that basically the education of elementary and secondary students or university and college students?

Madam Chairman: Ms. Morrison.

Ms. Morrison: Could you repeat the question, please?

Mr. Campbell: The question I had was to the educational benefits, education/student complaints section under the social benefits. Would that be an elementary or secondary situation, or would it be colleges and universities?

Ms. Morrison: Excuse me, this is Joy Van Kleef, assistant director in charge of that area.

Mr. Campbell: Thank you for the introduction.

Ms. Van Kleeef: That particular reference is to the Ministry of Education. School boards which involve high schools and elementary schools are outside our jurisdiction. So that is related to Ministry of Education issues strictly and/or OSAP complaints, primarily with colleges and universities.

Mr. Campbell: I thought that that was the case given the explanation earlier. How would you see the role of -- well, let me ask the other question.

Social benefits that you deal with, is that basically Family Allowance, which I see family benefits listed, but the social benefits, would that be municipal welfare cases?

Ms. Van Kleeef: We only handle municipal welfare appeals to the Social Assistance Review Board. General welfare assistance is considered to be the responsibility of the municipality and, therefore, outside our jurisdiction. But when those complaints are appealed to the review board, we have jurisdiction to investigate the board's decisions.

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Mr. Campbell: Okay. And because I felt that those might be the answers, in health, for example, would that be a health unit jurisdiction or the Ministry of Health?

Ms. Van Kleeef: The Ministry of Health, particularly OHIP.

Mr. Campbell: And, again, for similar reasons you are excluding health units?

Ms. Van Kleeef: Public health units, yes.

Mr. Campbell: Because they are outside your jurisdiction. How then would you bring in Children's Aid Societies given that there is a child advocacy role to take care of the individual case that you might have under these other units and also given that there is quite a municipal input into Children's Aid Societies? How do you differentiate between Children's Aid Societies and health units, for example, and municipal welfare, because they are basically pretty well the same structure. Now, again, I might --

Mr. Zacks: We do not differentiate between them because they are all considered by us to be outside of our jurisdiction.

Mr. Campbell: That is my point. Then how do you say that Children's Aid Societies are the one you picked that you are trying to expand your jurisdiction?

Mr. Zacks: Why pick Children's Aid over municipalities or other areas? Is that what you are asking?

Mr. Campbell: Yes.

Mr. Zacks: It was a decision made by Dr. Hill to establish some priorities because there is a huge field of agencies that are outside of our jurisdiction and he believed that Children's Aid and public hospitals are the ones that should be put at the top of his priority list because they were the ones that dealt with people who had the least amount of power in society. That was a personal decision by him, a policy decision that he made.

Mr. Campbell: Except that if I may explore that matter, they already have. There already is in place a child advocacy role within the ministry. I realize that it is not the normal way the Ombudsman's office operates, but at least they have some support and they are not entirely helpless.

I guess that is what I'm trying to get at is why this is at the top of the list and not -- dare I suggest some other? But I will not. Especially when all of the other ones that you have mentioned, education, Ministry of Education, the school boards of separate and so on down the list, are not.

What I am trying to get at, I guess, do you have a feeling for a number of complaints that are outside the Child Advocacy Office of the ministry? And if so, I would see some very narrow ground, very, very narrow defined area that you are going to be dealing with.

Ms. Meslin: I just wanted to talk generally about the various advocacy groups that are funded one way or another by government. Whether they be in correctional institutions or psychiatric hospitals, you may often find -- the question always is, "Well, if you have got that group, why do you need the Ombudsman?" And I think we are trying to say two things.

One, an advocacy group has a unique position. They do advocate on behalf of the complainant, inmate, patient, what have you. That is their interest. They are protective of the rights of those people and not the institution. The Ombudsman is not either protective of their rights or an advocate for anyone because in many instances you find that we look at the situation and say the institution is correct. The institution's action has been perfectly reasonable.

Many of the advocates come to us with situations which are beyond what they might be able to do. Because of our legislation, we can look at confidential information. We can interview absolutely everybody within sight. An advocate may very well be barred from a lot of that but still see the problem and can come to us and say, "There is a particular problem that I want to raise. I have talked to the superintendent or hospital administrator, what have you, and I have gone as far as I can go, but I still feel that there is something happening and I would like the Ombudsman to look at this particular case." And from there, we would take over and examine the situation from what we hope is an independent viewpoint.

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Mr. Campbell: I guess it is enough, Madam Chair, that having been a member of the CAS while I was a government municipal rep on the board, I wonder about the type of things that you would be investigating that would be outside, given what you have said, and I appreciate what you are saying. I do not know that it is a similar situation in the Ministry of the Environment field, for example, but I am just concerned about the types of complaints that came to our board, for example, and again, it is northern Ontario; it is not Metro Toronto. There probably are differences. I meant that as well, but at the same time, I am just wondering with the office already in place where you would fit in and the role you would play. But I guess with your experience in Kenora you probably can --

Ms. Meslin: Maybe Joy can direct it a little more.

Ms. Van Kleef: We are somewhat limited in our ability to give you details since we have never done a Children's Aid Society investigation. The only one that we have is still underway, but I will try to answer your question.

There are a number of existing appeals, as you know, from the Children's Aid Society to different municipal boards, for example, the Residential Placement Advisory Committee.

Once that process is completed, if the parent or the child is still unhappy with the actions and decisions of the Children's Aid Society, we would only be in a position to investigate the reasonableness of the ministry's actions in response to that complaint. But if we had jurisdiction over the Children's Aid Society directly, we could go beyond the ministry's actions and examine the Society's particular decisions, activities, the conduct of their workers, whatever the subject of the complaint was, the particular policies and procedures that gave rise to that complaint, and make quite specific recommendations to the Children's Aid Society about the Children's Aid Society.

We would be limited otherwise under the current system of only making recommendations to the ministry. And, as you know, Children's Aid Societies are quite independent in many respects, and the ministry may not cover the same kinds of issues that we would want to cover if we had direct jurisdiction.

Mr. Campbell: Thank you very much for your answers.

Madam Chairman: Mr. Tatham.

Mr. Tatham: A quick question. How many complaints have you had about Children's Aid? Somebody mentioned an urgent complaint, something that would have to be dealt with right away.

Ms. Morrison: I think it is difficult for us to say how many we have because it has not been a jurisdictional

area, and it has been known for some time in the public and in our various offices that we do not do investigations of Children's Aid complaints. So, usually, if someone would call us with a Children's Aid complaint, we would direct them somewhere else as quickly as possible. So we would have no way of evaluating which of those complaints were urgent and which ones were not.

Mr. Tatham: I will try again then. Would you have one a week or one a month or how many complaints do you have about Children's Aid?

Ms. Morrison: We have had over the past year --

Ms. Meslin: I think we have a printout.

Ms. Morrison: Okay. In 1985-1986, for example, we had a total of 62 Children's Aid Society complaints. They are called outside jurisdictions, because, of course, we do not have jurisdiction to investigate them. And seven other calls just for information relating to Children's Aid Societies.

It is very difficult for us to tell how typical that would be if we had jurisdiction because once people knew that we could do something, one would expect that number to change. And it's very difficult to predict how it would change, whether it would double or triple.

Mr. Tatham: This was after everything had been completed by the Children's Aid? Is that it? They had been all through the gamut?

Ms. Morrison: No, these would just be complaints in which someone is calling and saying, "I have a complaint against the Children's Aid Society." What we would be doing in these circumstances is referring them to the appropriate body or referring them in the right direction. We would not be doing any investigating at all.

Mr. Tatham: Have you done any tracking to see once you -- say you have got 62. Of that 62, you refer them back, perhaps, to Children's Aid or to whoever. Have you tracked them out to see what happened?

Ms. Morrison: No, we will not have the information to be able to do that. Because they were nonjurisdictional complaints, we do not get any information about them, except that they were a complaint, that it was related to the Children's Aid Society and that we gave it an appropriate referral. We have no reason to later get the information about that person, nor would we be justified.

1400

Mr. Tatham: A question would come to my mind, if in fact you have not got the jurisdictional right to look at it and you give it back to whoever, how successful or unsuccessful was that problem resolved? That would seem to be a reasonable approach.

Ms. Meslin: Mr. Tatham, when you are looking at a nonjurisdictional complaint, someone telephones you and says, "Hi. I want to complain about the Children's Aid Society." As soon as you hear that, you do not say "What is your complaint?" You say, "If you want to complain about the Children's Aid Society, we are sorry; we have no jurisdiction. But we can give you a telephone number to call, and those people may be able to service you." So we would not be able to expend the time and effort in tracking that. There is nothing to track. It would just go down on a short form to say "nonjurisdictional inquiry, Children's Aid Society."

Mr. Tatham: My next question is irrelevant, but I'll just ask have you given any trial runs because sometimes when you are trying to make the sale, you would like to know whether you can service the customer better than the other fellow servicing. That is what I wonder. If you have got a mechanism set up to look after a problem, what benefit is there to go from number A to number O? That is why I wonder. If we are doing a poor job, we should do something. If we are doing a reasonable job, why --

Ms. Meslin: If the agency, let us say the person we referred them to at the Children's Aid Society, was doing a poor job, the complainant has nowhere else to go. That is where generally, after they have gone through all the processes, they could come to the Ombudsman and say, "I was badly treated. I want you to look into it."

Mr. Tatham: My understanding, and I am fresh on this committee, but someplace along the line there are certain time lines, and if you go from stage one and you say "Well, I do not like dealing with these people. I will not wait for the 30 days; I will go back to the Ombudsman," I would rather like to think that the people would go through the process, and then if they are not satisfied, then go to the Ombudsman.

Ms. Meslin: That is normally the way it is with jurisdictional complaints. Complaints that we can now investigate, they have to do exactly what you said. They have to go to all the little steps, and at the end --

Mr. Tatham: Something that Mr. Bell was pointing out the other day, that if people did not take the action, they could then go to the Ombudsman. Is that not true?

Ms. Meslin: I think you are talking about the expiry time of a particular appeal, if there is a date at which they must appeal and they have not done it in that time limit. But even so, to get to that point, they have gone through many steps, generally. If they wait past that time, yes, they can come to us, of course, but that is when there is a definite expiry time for them to have appealed their decision.

Mr. Tatham: I think we want to be helpful to people, but I do not like, you know, setting up one system here and if they do not like the way they are dealing, just sort of

stop the process and jump back into something else. That is my concern.

Mr. Pollock: My question would be in line with Mr. Tatham's. And I was basing my thoughts along the fact that the other day it was mentioned that the Ombudsman had about a thousand complaints about the federal government. Of course the federal government does not have an Ombudsman. So I just wonder how to compare. You are saying you had 62, but I really do not know whether that was for the same year or what timeframe that thousand complaints about the federal government was. Was it for a year or was it for two years or --

Madam Chairman: Do you know the timeframe of the federal complaints that have been made?

Ms. Morrison: For example, 1987-1988, total federal complaints, 1,456; total complaints against the Children's Aid Society, 107.

Mr. Pollock: For that particular year.

Ms. Morrison: I think that perhaps is not surprising given the extent to which the federal government would impinge on everyone's life compared to Children's Aid Societies.

1405

Mr. Pollock: Of course, you have already mentioned the fact that you really do not have jurisdiction at the present time over Children's Aid; therefore, you would not have the nature of the complaints. And I was just wondering, would those complaints be as far as complaints about child care or would it be complaints about how they actually elect their board of governors?

I happened to be involved with the Children's Aid Society, too, when I was a municipal representative, and I found it just a little strange how they chose their board of directors. For instance, you have to buy a membership. At that time it was a dollar. And so anybody that was influential could go out and I am sure pass out quite a few memberships, and then those particular memberships could vote by proxy. And a person could walk into their annual meeting with enough memberships underneath their arm to practically assure them election to the board of directors, which I thought that was a little strange. But anyway, that is the way it was done. And sometimes there would be issues out there that people kind of resented that kind of tactics being, you know, worked.

Ms. Morrison: I think, Mr. Pollock, we have not seen any complaints of that nature, or if we have, we have not noted that that is the kind of complaints they were. The other thing you have to remember is that the person has to be personally affected by whatever they are complaining about, and someone who is just kind of generally complaining about the processes used by the Children's Aid Society, it

might not be a jurisdictional complaint for that reason.

Mr. Pollock: But what I mentioned really I guess would not really totally fall under the jurisdiction of the Ombudsman, anyway. It could basically be covered by legislation.

Ms. Meslin: It may. It may well be if the person who is running for the board decided that the process which affected him or her was unfair, and we had the jurisdiction, and came to us and said "I would like you to investigate because I think that the board in which I ran does not run right."

Mr. Pollock: I would image that some of these people that actually were letting their names stand and going through this procedure knew the rules and regulations. In other words, the regulations possibly would have to be changed rather than whether it was totally being run wrong or not.

Thank you.

Madam Chairman: Mr. Philip.

Mr. Philip: I would like to deal with who has the right under the system you are proposing to complain and what the procedure is now as compared to what it would be under the system you are advocating.

And my first question is, is it fair to say that in your opinion that you can have all the advocates wall to wall but that advocacy can be quite meaningless unless there is an independent way of investigating the complaint, and that under the present system in all three jurisdictions that you are asking for, there is no independent investigation of the complaint? There may be advocates, but those advocates may have real trouble getting ahold of the information; is that correct?

Ms. Morrison: I do not think there are any independent investigatory procedures in place in any of the three areas.

Mr. Philip: I wonder if I can review with you how - someone, a parent, foster parent, might go about having their complaint addressed under the present system? Under the present system with the Children's Aid Societies, they would probably go and call up the local Children's Aid Society and ask for a supervisor; is that correct?

Ms. Morrison: That might be the procedure.

Mr. Philip: In your experience in looking at Children's Aid Societies in preparation for these hearings is it safe to say that a number of the complainants would not be told by the supervisor that there would also be an appeal to the Society's board of directors if the complainant were not satisfied with the results of whatever action or inaction the supervisor took?

Ms. Morrison: There are a number of review mechanisms in place. How often they are taken advantage of or how effective they are is not something we have very much information about.

Mr. Philip: Is there a requirement in any of those to advise the complainant of their rights to appeal at least to the Society's board of directors?

Ms. Morrison: I think so. Yes, I think they must be told of their rights.

Mr. Philip: So the supervisor would automatically have told the --

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Ms. Morrison: Well, Section 64 of the Child and Family Services Act, for example, requires every Children's Aid Society to establish a written review procedure to deal with complaints by any person regarding services of the Society, and that process has to have the approval of the provincial director. So there are some mechanisms.

I do not think we are suggesting that there are not any mechanisms in place for complaints, but there is a difference between having a mechanism in place for someone to complain to and have the thing to look at the Society's actions themselves and having an impartial investigation of the actions of the Society and related circumstances.

Mr. Philip: I understand what you are saying, but is it not correct that you can have a complaint mechanism in place without having a requirement that each complainant be instructed as to the complaint process? A number of people might not know that there is a complaint process beyond complaining to the supervisor.

Ms. Van Kleef: My understanding, Mr. Philip, is that the legislature says that that information must be provided by the service provider upon request. Whether the Children's Aid Societies have their own internal policies requiring their staff members to advise people of that complaint procedure, we would not know, and it may vary from society to society.

Mr. Philip: So if a parent complains about what is happening to his or her child and does not request the information as to what appeal procedure he or she has open to him beyond complaining to the supervisor, he may not receive it; is that correct?

Ms. Van Kleef: That is right.

Mr. Philip: Is it correct that the complainant, if he is informed enough or smart enough to ask, "Well, I do not like your decision, then. Is there an appeal procedure?" that the information before the Society's board of directors would in fact be information provided by the social worker or the staff person who in fact had made the decision which

was objectionable to the complainant in the first place?

Ms. Morrison: Certainly that would be some information available. I think we have to assume that the Society would have the ability to try and get information from elsewhere. But whether they would or not, we don't have any information.

Mr. Philip: But there would not be any requirement that either the complainant appear before the Society's board of directors, other than perhaps in writing, or some advocate write it, and in fact the information upon which the decision would be based would largely be that supplied by the very organization?

Ms. Morrison: They can establish their own review process. That's what the legislation says. And we really do not have any information about what that review process is.

Mr. Zacks: The statute says the complainant has a right to be heard. Whether that means a full hearing or partial hearing, I do not know.

Mr. Philip: I guess my complaint, if you like, about the present procedure is that it seems to me you can have the best board of directors in the world but unless you have an independent investigation, if the information coming up is the same information on which the original decision was based, then you do not have an unbiased appeal procedure either.

Would you agree with that?

Ms. Morrison: To the extent that that is the process, yes. As Michael says, there may be a possibility that the complainant can be heard at one of those hearings, but it seems to us that these procedures are to be set by the individual Societies and we do not really have information about what those procedures might be. They may be very fair, or they might not be.

Mr. Philip: Would it be fair to say that you might get a different type of decision by a board of directors in one community on an identical case as in another community where they may in fact have developed different kinds of procedures?

Ms. Morrison: That may be. Again, the procedures they develop are subject to the approval of the provincial director. Now, to the extent that the provincial director has said "We must have the same kind of procedures everywhere," we just do not have that kind of information, Mr. Philip.

The Researcher: Not necessarily the same. It may vary from society to society.

Mr. Philip: My other question comes along the line of the complaints I hear are from people saying they see children that are being victimized and that they complain

and that nothing seems to happen. And I guess my question to you is under the system you are proposing, who would have the right to be a complainant? There is the parent; there is the foster parent; there is probably the ministry, if they wish to ask the Ombudsman to investigate a certain Children's Aid Society because they had received complaints. Who else would have the right to complain? Would a child have the right to complain himself or herself?

1415

Ms. Meslin: Yes.

Mr. Philip: So the child. What about a doctor, a family physician, who as a third party sees what he thinks are abuses and the Children's Aid Society not acting? Would you see yourself having the right to investigate on a third-party information?

Ms. Morrison: I think we would probably treat that the way we treat any questionable third-party complaint. That is if we think there is a serious problem, the Ombudsman investigates on his own motion because he has the authority to investigate a complaint on his own motion, which then keeps you away from any later questions about the authority of the complainant to complain.

So if we got that kind of information and we felt it was bona fide and that it really did require some investigation, I think our appropriate route would be for the Ombudsman to investigate on his own motion.

Mr. Philip: One last question. Is it your understanding that under section 64(2) that a third party has the right to have his or her complaint heard through the Society's board of directors? Medical practitioner notices a problem with the child, feels very strongly that the child is being abused. Would that third party have the very real right, the same way as the parent or someone or the child themselves?

Ms. Morrison: I believe they would.

Mr. Philip: Can you check that out for us and let us know?

Madam Chairman: And also we can confirm that perhaps with the Society when it appears before us. That would be helpful.

Miss Bryden.

Ms. Bryden: Thank you, Madam Chair. I have one follow-up question. My colleague, Mr. Philip, has a couple of other questions.

Would a grandparent or any part of the extended family of a child be considered a third party or even a more interested party if these complaints were accepted in the same way as the parent? Which category would extended family

be in?

Ms. Morrison: Our jurisdiction requires that the complainant be personally affected, and I believe we have in fact received complaints from parents or grandparents or other interested people. Again, if there is any question as to how personally affected the complainant is, if we think there is a real problem, as we do in some other areas, if we think there is a real problem but we are not sure the complainant has the position to complain, the Ombudsman can on his own motion investigate.

Ms. Bryden: Madam Chair, the whole questioning and information in this field and the request that also the jurisdiction be expanded to hospitals, which involves hospital boards, does raise very big problems about the question of whether these boards of either Children's Aid Societies or hospitals should be brought under more regulations which would make their operations more subject to rules set by the legislature or by the ministry rather than allowing as much freedom to not only make their own bylaws and to decide their own electoral processes and to decide their own methods of dealing with complaints. But I wonder if this committee should be considering the question of a much greater investigation of the diversity of the bylaws and the methods of operation of the boards, of these really semi-autonomous boards subject only to a certain amount of general legislation, and as to whether it is necessary to provide more regulation which would produce more uniformity in their practices.

It is going to be very difficult if you did extend jurisdiction to say, "Well, this should not have been done," but the board would say, "But our bylaws permit it." And nobody has ever required that the bylaws be approved, I do not think. I may be wrong. It may be under the ministry's jurisdiction to approve all bylaws before they give them any grants.

1420

I think it is a big area that we should maybe consider looking into in more detail, not necessarily in these very brief hearings, but perhaps having some sort of a study made, if we do want to consider extending jurisdiction to these two areas of hospital boards and Children's Aid Societies.

Have you done any of this sort of examination across the province of Children's Aid Society boards and the diversity of their bylaws?

Ms. Morrison: No, we have not. I do understand from Mr. Bryant that all of the bylaws, CAS bylaws, have to be approved by the Ministry of Community and Social Services at present. The extent to which the ministry may require conformity or uniformity, I am not really familiar with it. We have not done that kind of review because, as I say, it has not been a jurisdictional organization. The complaints would be complaints regardless of whether the societies are

uniform or not. The complaints would be investigated on their own merits.

Ms. Bryden: Would it not make it more difficult for you to claim that they have acted unfairly or something if their bylaws are much more broad than, say, another society that has narrow ones?

Ms. Morrison: Well, perhaps, I should maybe note that the Ombudsman has the authority to say not only that a decision, act or omission is unreasonable or unjust or oppressive, but that a regulation or a law is unjust or unreasonable or oppressive. So there would be nothing to prevent us if we found that particular circumstances led the Ombudsman to the conclusion that a bylaw was unreasonable or unjust or oppressive. We could certainly come to that conclusion, and maybe that is one way of assuring that there is more uniformity and is a more reasonable set of bylaws is if we could investigate and find some of them to be unreasonable.

Ms. Bryden: You think the same principle would apply to hospital boards if you do request jurisdiction over hospital boards? Same problem or would it be greater because of more diversity and less ministerial regulation? I may be wrong about the less ministerial regulation. I suppose they probably approve hospital boards' bylaws, too.

Mr. Zacks: They do.

Ms. Bryden: But is the same problem likely to come up in hospital boards?

Ms. Morrison: I do not think we see it as a problem in the sense of being able to investigate any particular complaint and come to the conclusion that the bylaws just needed to be changed. And what we might find, in fact, is that having other bylaws which were better would provide us with information upon which to decide that a bylaw should be changed in a particular direction, just as we sometimes in provincial matters go and look at what other provinces do to decide whether something that the Ontario ministry of the same kind is doing is reasonable.

So, you know, if we had a set of different hospital bylaws and some of them are excellent and some of them are awful, and we were looking at a complaint relating to one of the awful ones, the excellent ones would give us examples of how that bylaw might be improved.

Madam Chairman: A number of people want to ask a supplementary on this particular question of bylaws and regulations. I was just wondering if you were going to change your topic now, Miss Bryden, or along the same lines?

Ms. Bryden: No, I want to change my topic.

Madam Chairman: How about if we entertain the questions so that you'll have an opportunity to respond because after you I just have Mr. Bossy in terms of

questions, and I am not sure who has raised their hand wants to deal with this particular issue. And I have Mr. Mclean.

Mr. McLean: Thank you, Madam Chairperson. Is there not a complaint procedure now in the Child and Family Service Act?

Ms. Morrison: There are a number of appeal processes and a number of different ways in which different kinds of decisions can be appealed or revisited. But there is not an independent investigatory function set out in the act.

Mr. McLean: But if there is a complaint lodged, regardless of who it is by, that agency then could do the investigation, other than the people that are complaining. I mean, if you had the Ombudsman's Committee involved, they could investigate it. But why, if there is a complaint now, would not the agency investigate it? And I'm sure they would. Then are you saying that you feel that the agency's investigation would not be appropriate, that there should be an outside body to do it?

Ms. Morrison: Well, you mean the Children's Aid Society itself?

Mr. McLean: Yes.

Ms. Morrison: To some extent its investigating its own decisions and actions and omissions would perhaps be less than satisfactory to a complainant who is complaining about those very decisions.

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In other sorts of circumstances, the appeal route is to the court, and the court does not, of course, carry out an investigation about the appeal. The court hears the position of the parties and makes a decision. There is no investigatory process.

Mr. McLean: I have been through some of these, and I know that there is a complaint process and the police have been involved and many different agencies get involved. I thought it would be laid out in the Child and Family Service Act the necessary steps that an individual who complains could take.

Mr. Zacks: It is. There are a number of appeals and reviews and procedures an individual can take to resolve complaints, and indeed if the Ombudsman had jurisdiction, these individuals would be required to take these remedies or, if there are time limitations involved, wait until the time limitations have expired before they can come to the Ombudsman. The Ombudsman still remains the last resort.

It is really no different for the Children's Aid Societies than it would be with any other governmental organization that we currently investigate, for example, Workmen's Compensation. Before the advent of the Workers' Compensation Appeal Tribunal, the Ombudsman would get

involved after a worker went through all the internal review process, the investigation is conducted by the Workers' Compensation staff, the appeal staff, who go out and do investigation and indeed speak with witnesses and accumulate a file and present it to claims adjudicators. If the worker were dissatisfied with that result, they would go to the appeal board. And now, at that stage the Ombudsman would get involved after numerous appeals. As you know, we have drawn up many cases about Workers' Compensation here because the various ombudsman believed that a wrong had been done.

With the development of the Workers' Compensation Appeal Tribunal, another layer or another level of review was established and the Ombudsman took the position that all complaints against the Compensation Board must now go through that additional step to the tribunal, and we only become involved after that. And our role now deals with --

Mr. Philip: What if the person is still alive?

Mr. Zacks: Well, it depends on what age they start. But that is just an example of how we become involved in it. Our current situation with both the public hospitals and Children's Aid Societies is our current role is to deal with the government involvement and supervision that exists with those agencies, and we do receive complaints against the Minister of Community and Social Services pertaining to Children's Aid because that minister gets involved at a stage where the individual has gone through a multi-level review processes and remains dissatisfied.

Similarly with public hospitals, we get a few complaints dealing with the provincial tribunal that deals with hospital admissions and a couple of complaints dealing with the Minister of Health's general oversight of public hospitals.

Another analogy would be municipalities. Interestingly, both the Ontario Municipal Board and the Minister of Municipal Affairs has in the legislation an extraordinary amount of power dealing with municipalities. Virtually any municipal decision can be overturned if you read your legislation clearly, and both the OMB and the minister have parallel powers. The legislation in their respective statutes is virtually identical. They really do not use that power because of a government policy of taking an arm's length relationship with municipalities.

The Ombudsman had to deal with that problem because at various points we have received a number of complaints about municipalities and we were aware of that legislation, complaints dealing with zoning, garbage collection. And the Ombudsman, a number of years ago, made a decision to respect the policy decision that the government has taken, that those types of decisions are for the municipalities to deal with; you'll have to see your elected representative.

So we do not investigate those powers. In fact, we do not even refer individuals to the ministries about those kinds of complaints because we see it as being a fruitless

exercise because of policy decisions taken not to interfere.

1430

In terms of current complaints about Children's Aid and public hospitals, we have very little scope in terms of type of decisions and actions taken at the hospital level and the Children's Aid Society level. Complaints that come to us are really complaining about actions taken at the Children's Aid level, the actual field level, the operational level. And the reason they've gone to the minister is because, through the various procedures, either members have referred them that way or we've referred them that way. But the actual investigation is not very satisfactory because we are limited in the type of recommendations we would like to make and type of investigations we'd like to do.

If we did have jurisdiction, my prediction would be that the Ombudsman's role would be primarily one of waiting until the process in place has run its course. And the Ombudsman would be investigating after all the existing remedies have gone through and doing a very broad and general, and, in fact, in many cases, systemic types of investigation dealing with similar complaints in various areas around the province dealing with types of Children's Aid decisions and also with hospital decisions.

It would primarily be, I think, of a systemic nature. It would not be the type of cold toast complaints dealing with public hospitals. We wouldn't be investigating every cold food complaint and every late complaint or rudeness complaint. It would not be that type of investigative process at all. I think it would be more of a general supervisory investigation, looking at general complaints that are numerous and doing systemic type investigations.

Madam Chairman: Mr. Philip, on Ms. Bryden's point.

Mr. Philip: My supplementary from Ms. Bryden's point, and it leads nicely out of what you've just talked about. Is it not fair to say that a number of Ombudsmen, not just Dr. Hill, have made some of their most valuable contributions by doing systemic types of investigations; in other words, examining what is happening provincewide in a particular ministry or set of agencies?

And would it not be reasonable to, as a starting point, were you granted jurisdiction, to stand back for a few months and to do a systemic analysis of what is going on in the 54 Children's Aid Societies with a view toward bringing in recommendations that might improve their working and thereby reduce whatever individual cases you might eventually receive?

Mr. Zacks: I would predict that if and when an Ombudsman gets this type of jurisdiction, it would be a very cautious process. The Ombudsman would want to assess the type of complaints that were coming in before general policies were established and the type of investigations

that were conducted. It would, of course, depend upon the Ombudsman of the day, how he or she would want to proceed in this area.

But my sense of it is that it would be a very slow, cautious approach, and I do not think an Ombudsman would jump in with both feet and start doing broad systemic investigations without getting a good understanding of what the types of complaints are that are coming in. So there would be a period of monitoring and dealing with individual complaints and then stepping back periodically and assessing those types of complaints to determine what type of systemic investigations should be done.

Mr. Philip: My last question on this rises also from your earlier answer related to the fact that there may be inconsistencies between the way in which one Children's Aid Society operates and another. I am wondering if among the 34 Children's Aid Societies operating in different parts of this province, recognizing that you do not have jurisdiction to investigate them, you do get complaints at your office by people who do not know that you do not have power to investigate. Are there complaints, and I am not asking you to name the areas, but are there more complaints on certain Children's Aid Societies than on others?

Mr. Zacks: I must defer to my colleagues.

Mr. Philip: And if so, would you be able, for example, without necessarily naming the particular Children's Aid Society, bring us figures on that because that would, it seems to me, give some indication of inconsistencies in the administration of Children's Aid Societies?

Mr. Zacks: I personally do not know.

Ms. Van Kleef: We do not have information on that.

Mr. Philip: You have no way of collecting that?

Ms. Morrison: Because it would have been collected as nonjurisdictional inquiries or complaints, we would not necessarily have information about which Children's Aid Society was complained about by any particular complainant because, as Eleanor said, we would just be referring them as quickly as possible to another remedy. So I don't think we would have that information.

1435

Mr. Philip: Would you not have anecdotal, at least, evidence -- you know, you must get from your field workers that the Thunder Bay office maybe gets a lot of nonjurisdictional complaints on one area whereas the Toronto may get nonjurisdictional complaints in another area?

Ms. Morrison: I think it would be really unfair to the areas involved for us to take some kind of guess at which ones have the most problems. We just do not have the information.

Madam Chairman: Mr. Elliot.

Mr. Elliot: I would like to comment on Ms. Bryden's point, too, with respect to the need for more regulations within the ministry, that type of thing, and make a comment that I think that the desirable way to go may be to have the jurisdiction extended. And the reason I say this, in our briefing last week, we got a lot of very interesting statistics that I think because of the nature of the committee most people stay away from.

And I took a fairly close look at these statistics, and the reason I think that the Ombudsman's extended jurisdiction might be advantageous here, depending on what we hear over the next several days is that as you look at the totals over the ten years of operation of the Ombudsman's office, I think that the boards and agencies that they have jurisdiction over are being very well served in a lot of ways.

And the underlying idea I am trying to present here is that just because a complaint is laid does not necessarily mean because the Ombudsman's office is looking at it on behalf of the individual that the individual will be the only person looked after there. And this is the difference I think between the advocacy thing we were talking about before, and it was a real concern of mine last week about this type of thing. And the kinds of figures we have got on these statistics I think some of the rest of you will want to look at because right off the top there were 8,425 complaints that were unsubstantiated, which meant they were written right off the top. Investigations discontinued, abandoned for one reason or another, 6,907, which would mean to me that it is either resolved amicably or just goes by the board. And then another 7,838 where the investigation was discontinued and withdrawn, which maybe there were some happy resolutions there, too. But those three items, that total, in the order of 23,000 of the 37,000 complaints totalled there. Now most of the other 14,000 are happy resolutions.

Now, I have talked to a number of people in boards and agencies and individuals who are right on the line and want to go with the Ombudsman and to try and get a fix on whether or not the boards and agencies would welcome this type of intervention. And the answer I am getting loud and clear for the people who I think are confident in what they are trying to do and competent in what they are doing is that they would like this one last pitch being available to the individual so that they are clearly treated because, as Mr. Zack said in his presentation a couple of times, when they start investigation within an agency or a board, you are commenting on whether or not the policies presently in place are actually being effected or not. And often, even if they are being effected, there could be a good look at them to see whether or not they were the appropriate regulation in the first place or the appropriate procedure in the first place.

So I really like the kinds of answers that you are

giving to some of the response in this particular area because, quite frankly, what everybody was unanimous in saying is that if the ministries that are responsible for the particular board or agency put the regulations in place so that they cannot operate at all, that is the worst thing that could happen.

Now, it seems to me because of the investigation aspect of the Ombudsman's office that they are in a position in a lot of situations not only to support the individual that has the complaint but to tell that individual whether or not they are being fair in the complaint because, quite frankly, sometimes the expectation of the individual is completely out of line.

And I think really in looking at these three areas, there are a lot of specific cases that will come to the table as we talk over the next week about that particular type of thing. So addressing your point, Ms. Bryden, I think if I wanted to lean towards extended jurisdiction as opposed to extending regulations to make it tighter, I would lead to the extended jurisdiction on everything that I have been able to glean in my investigation so far.

Madam Chairman: Miss Bryden, you may want to respond to those few questions that emanated from your question. I know you had one more question to pose.

Ms. Bryden: I did want to respond a little bit to what has been said on my original point.

1440

Madam Chairman: Good. And the other thing I just want to draw, before we conclude on your point, which has been a very valid one, we do have a number of groups coming who might be able to shed more light on this, and I would like to hold back on anything we might send our researcher out to do until we have heard from them and we can find more clearly perhaps what it is that might help you in your consideration of this particular problem, if that is acceptable at this point.

Please go ahead.

Ms. Bryden: Okay. Madam Chair, I think the discussion has been very helpful. And with regard to Mr. Elliot's point, I do feel that I am not really in favour of putting the Children's Aid Society in a straitjacket on their powers or their exercise of their powers because when you use special purchase of service arrangements for delivering a service, you do put a lot of faith in the group from which you purchased the services. And that is really what Children's Aid Societies are, providing a service to the community, the government, in looking after child welfare.

So that I was just more concerned about uniformity of regulations and democratic processes in the election of boards to make sure that those were looked at and were supervised by the ministry so that there would be fairness

in dealing with cases through their own review procedures.

So that I do appreciate your point that probably extending jurisdiction would add another element to the public's feeling that they were getting fair and equitable treatment and the proper review procedures. So that I am not opposed to extending jurisdiction if it can be handled properly and if it provides an additional service, which I think my colleague has mentioned, and that is that there is an independent review of the situation through the Ombudsman, which is not possible under the internal reviews by the Children's Aid Society and may not be as possible even by the ministry because they are also partly the funder and the Children's Aid Society is in a way an arm of the minister. That was my main comment on that.

Should I go on with my other question?

Madam Chairman: Yes.

Ms. Bryden: My other question is that the kind of cases from Children's Aid Society that come to me as a member is the question of taking children away or of going to court to get certain medical treatments required by the Children's Aid Society for people perhaps who object to children being given blood transfusions or given contraceptives or something like that. Now, I realize that this is not done without a court decision on this under the law, but the Children's Aid Society certainly has power to seek such a court decision.

What would be the role of the Ombudsman in -- if say the parents claimed that the court decision was wrong or you still just have to go through the court appeal process and say you lose the appeal, is the Ombudsman able to still consider the case and make an additional recommendation?

Mr. Zacks: On the specific case, the Ombudsman's position would likely be that it's not a jurisdictional complaint because it has gone through the court process. However, it would be possible for the Ombudsman to look at the issue in general in terms of the type of practices or procedures or guidelines that are in place in dealing with these types of situations when they occur in a specific Children's Aid Society or provincial.

So, it shows you the multiple role that the Ombudsman has. Although he could not investigate the specific complaint, he could look at the general practices and procedures which led to the complaint and make recommendations for their improvement or, indeed, conclude that those practices are reasonable practices and appropriate practices.

Ms. Bryden: Thank you.

Madam Chairman: Thank you, Ms. Bryden.

Mr. Bossy.

1445

Mr. Bossy: All the questions have been asked and supplementaries seem to be sneaken in very easily. Mr. Philip has a good way of doing that. I give him much credit for that.

My question, mainly, and it is sort of in a broad sense, what is the Ombudsman's office really seeking in the sense of how broad a mandate to cover the Children's Aid Society? Are we saying to deal with the Societies' services it offers or on specific cases?

Mr. Zacks: If the legislation is amended to give the Ombudsman jurisdiction, I think the Ombudsman would like to have exactly the same type of jurisdiction over the Children's Aid Societies, public hospitals and the Home Warranties Program as he has over any other governmental organization that he currently investigates. He would not like to see it limited in any specific way, but simply the same kinds of limitations he currently has should be applied to the agency that we're currently now discussing.

Mr. Bossy: And knowing that the Children's Aid Societies presently are mainly operated by the municipalities and that you do have somewhat of a mandate that you can investigate those areas where the government has taken over the agency, now would this not suggest to look at an expansion of jurisdiction there, that we would have to bring all Children's Aid Societies under the jurisdiction of complete control of the government?

What I am trying to get at here, do we want to remove, like the court of last resort, away from the municipality and putting it all on to the government and in turn have it supported by the Ombudsman for an investigation? Presently the boards of the Children's Aid Societies are accountable to the municipality, who are really the people, and should they be accountable there? I have some question here to move that completely to government control.

Mr. Zacks: My understanding of how it works is that ultimately the Ministry of Community and Social Services has a general oversight function and can, if it believes it appropriate, take control of the Society -- I do not know if you call that receivership or not -- just as the ministry can take over a hospital or another ministry can take over a municipality or its circumstances.

So I am not sure how this would effect our general independence anymore than it currently is affected by the legislation. The recommendations would go to the board of directors in the first instance, if we had jurisdiction, and the minister in charge as well as it currently is for agencies, boards and commissions that we now investigate.

Mr. Bossy: We realize very much that when we deal with the Children's Aid Society, it is a very sensitive area. And I have a question about it in the back of my mind, how quickly do you think that the Ombudsman's office or the

people that may be involved in dealing with the cases for Children's Aid, how quickly will these people be able to be of enough expertise to really deal with children's problems in the mainstream?

Mr. Zacks: It would certainly have to be an educational function. In our office we may have to purchase those types of services, but we currently investigate complaints, similar to what we would be investigating, now. Once they have gone through the ministry, we do look at those types of issues and we have people in the office. If we have got jurisdiction, I think we would have to obtain that additional training through a number of methods.

Ms. Meslin: I think because the Ombudsman's jurisdiction has not been expanded in the manner that we are talking about over organizations that are very large and very complex, that once the Ombudsman could get that jurisdiction, we would have to do an awful lot of training and studying about these areas before we began at all.

1450

I do not think that the Ombudsman by any stretch of the imagination, if the government decided to expand that jurisdiction, would do it tomorrow. I do not think that that would be right or proper because, as Michael said, it is highly complex, and we would want to be very sure that we have a good grounding in our general information. And we would have to look at the organizational structure of the office additionally. So that it would not be something that we would just accept and go on to tomorrow.

Mr. Bossy: I could see the system of checks and balances that is presently in place to deal with that. It would be sort of a shock wave going through that system if we expanded the jurisdiction of the Ombudsman to go into sort of the court of last appeal. And I am just wondering what effects on the present system that it would have when that comes down to the Ombudsman having the ultimate or the complainants would have the ultimate recourse and removing somewhat the authorities of what the present system presently has, what effects we may see.

With the municipalities, again, the sensitivity that municipalities have with Children's Aid, and I can assure you it is no different in my area than it is in other jurisdictions in Ontario, Children's Aid Societies are very sensitive people.

Ms. Meslin: I think you might well be able to compare it to the original shock wave of this province putting an Ombudsman in place. Certainly in 1975 when the Ombudsman went into place, you had the same kind of thing over all the provincial ministry's boards and agencies, and it would necessarily have to be an educative process on all sides, a real public education process, both with the agencies involved and with the citizens at large.

Mr. Bossy: The indicators are, just in the discussions in my own area, too, that they have felt that the powers within the government in having taken over the agencies, that that by itself is quite an indication that there must be a very good sense of checks and balances there now to have a decision made to take over the agencies. And I'm just wondering what the Ombudsman really could create in providing a better set of checks and balances without, naturally, the cost, the overriding cost of extending that service, which is a considerable amount. We'll be getting into it in this coming week.

Ms. Meslin: I think one of the most important things that any board or agency, whether it be Children's Aid Society or a particular ministry, finds after some experience with the Ombudsman is that because of our independence, we very often assist them by being able to say to other organizations or individuals, "The agency is doing it right." We'll tell you we feel we've done it. We've looked at it independently. We have no axe to grind. We're not on the side of the complainant, nor are we on the side of the agency. What we want to do is get all the information together, and at the end of the day you may very well be supportive of the agency's position, which bolsters them, makes them be able to say, "This independent organization looked at us, and they agree what we're doing is correct." So from that point of view, it is often very helpful that the Ombudsman has gone in and done a thorough investigation..

Madam Chairman: Mr. Carrothers.

Mr. Carrothers: I wanted to perhaps just explore a little bit about the informal role that the Ombudsman's Office might play in a case. Obviously, you get jurisdiction when all levels of appeal have been completed, which is somewhere down the road. The complainant has probably spoken to you before that happens, or presumably might happen. Do you get involved in any mediation or informal sort of discussions prior to you being able to officially take positions or take a role in the case at the end of the appeal process?

1455

Ms. Meslin: You mean before it has gone through its processes?

Mr. Carrothers: Before it has gone through its internal appeal process.

Ms. Meslin: No, we do not because if the complainant comes to us part way through the process, we tell them that they have to complete the process and then we will become involved. So we send them back to complete the process.

Mr. Carrothers: You do not get involved at all?

Ms. Meslin: No.

Mr. Carrothers: Because my impresssion of the Children's Aid process is there is already a fairly elaborate advocacy and appeal system in place. So your involvement, should this jurisdiction be expanded, is pretty well down the lines --

Mr. Zacks: It won't be duplication.

Mr. Carrothers: No, I do not think duplication. I'm just trying to think of the role you will be playing. There have already been a whole bunch of people who looked at it in an advocacy role, and my impression of that system is that time is very often of the essence. It is a very subjective system as well. It is not a hard and fast, black and white situation, in probably very few cases.

My impression has been that you need a decisive system in order to get the results you need, and I guess that is why I wonder if you might add to this process before the appeals process had gone by because I'm just sort of, in my mind, wondering at the end of it what you add, and maybe the answer has already been given when we talk in terms of systemic review?

Mr. Zacks: The only type of intervention that might occur during the actual Children's Aid process is, as in other processes that are ongoing, we get often complaints about delays. There may be a number of delay complaints that we would look into, and most of these involve simply telephoning the agency, finding out what is happening and acting as a conduit for information, clarifying information for complainants. In many cases that is what happens in Workers' Compensation.

Ms. Meslin: I might be able to give you another illustration. Very often, for instance, if there is an emergency, let us assume that someone's family benefits have been cut off and they have absolutely no, you know, it is Saturday afternoon or Friday afternoon, late afternoon, nowhere to go, but 4 o'clock in the afternoon, and they cannot get to the appeal procedure. We have often intervened to the point where we will speak to the agency, let the ministry know the dire straits the person is in and ask if they can do something in the interim.

In that instance, it is not that we take a position in any event. We just say, "This is the situation. Can you do something at this time or can you hold off evicting the person at this particular time while the process is completed?"

Mr. Carrothers: So in some sense, you have taken an informal role? You just tried to get parties together.

Ms. Meslin: To that extent, yes.

Ms. Van Kleef: We do in other cases. A difficulty that arises in the case of Children's Aid Societies is that they are extremely sensitive to the confidentiality issues that arise from the character of their problems, and they are

very reluctant to give specific information out prior to the other body having authority to obtain that information. So that has been a limiting factor.

Mr. Carrothers: Well, you are speaking in terms of doing investigation. Maybe what I am speaking of is perhaps the kind of example we have just been given where somehow a process that is supposed to happen is not happening, and just by the intervention of the Ombudsman's Office something may or may not take place.

Am I right in assuming at this point that you have not quite determined what the impact would be on your office if this extension of jurisdiction were made? You do not know the number of people or anything?

Ms. Meslin: What I would like to do is once we have finished the questioning, Michael Zacks has done quite a bit of background information on some estimates of what we assume could happen and the kinds of cases, what we would need in all those areas and the staffing. Once we finish the preliminary questioning, we will go on and Michael will give you his input.

Mr. Carrothers: Just one final question, then. Mr. Campbell mentioned that why the Ombudsman had chosen this as one of the priority areas for expanded jurisdiction. I wonder if you might explain that again. I do not think I quite understood. Was it just because the people involved have so little ability to defend themselves, or have you had some indication that the Children's Aid process is not functioning properly?

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Ms. Meslin: I think that, generally, if we go back to the Ombudsman originally putting to this committee the fact that jurisdiction had not been reviewed since the Ombudsman was established, the committee then said "Would you do a review paper for us?" And we did, as you have it. It was quite broad in scope. But the committee then said, "Well, if there was anything that you thought, would you prioritize at all," and although the Ombudsman did not want to prioritize at all, he realized that it would be ridiculous to ask this committee to look at the broad scope of everywhere we could ask for jurisdiction and did use that criteria, looking to people or groups that seem to have the most difficulty or that might need the Ombudsman services.

Mr. Carrothers: What I think I hear you saying, it is more on a philosophical basis?

Ms. Meslin: Right.

Mr. Carrothers: You do not have any direct indication that the Children's Aid process is not --

Ms. Meslin: No, we have not been lobbied with all kinds of people saying "Please, look at Children's Aid." I should add just informationally, the Canadian Ombudsmen,

when they meet annually, have put as one of the points on their agenda children's rights and children's problems, and over the course of a number of years, a number of the Ombudsmen who have got the jurisdiction have raised some very serious problems, and because of the size and scope of our office have asked us about them, and we have had to say, "We really cannot give you any input. We have nothing to do with the control in this province," which is the Children's Aid Societies. So that was just one of many factors, I think.

Mr. Carrothers: Just one final, if I may, that I wanted to ask. I sometimes get the impression that in areas like the Children's Aid or others where they are very subjective and it is very difficult to find out what is right and wrong, in some cases you have to act quickly in order to solve the problem, whether it is there or not. If you take too much time to figure out if there is a problem the problem has already occurred.

It seems there is a fair level of checks and balances in this system. I guess I am worried that adding another layer here or another area of appeal kind of slows that process down even more, making even less effective or might have the danger of making it less effective. And I wonder if you have any views on that as to whether your office being in here -- I can understand the systemic discussions where you might be looking at the whole system and making recommendations. But when we are dealing on a case-by-case basis, if there is sort of another layer here, whether that might just paralyze the system more than help it?

Mr. Zacks: That is an objection and observation that has been made by numerous organizations over the years, Correctional Services, Workers' Compensation Board. Most recently the Labour Relation Board argued on similar lines in our court case where their complaints about our involvement with them is there will be delays, disruptions, lack of finality, inconsistency, a number of other things.

All I can tell you is it does not happen. Those kinds of concerns have not actually been borne out. The fact that I think if you speak to numerous agencies they will tell you that the Ombudsman actually helps them in the general administration of their organization as we raise concerns with them and help them prevent similar problems from occurring in the future.

So I think the Ombudsman really provides a very helpful and nondisruptive process. Granted, there will be a need to deal with us and talk to us and give us information. That will take time on the agency's part, as it will on ours. But I think if the overall goal is to have a better administrative process, which is what I think the Ombudsman is there to do, is to ensure that there are no errors and that if the administrative actions have caused any errors, to correct it, if that is the goal, then it is a worthwhile goal for Children's Aid and public hospitals, as it is for Ontario Municipal Board, Labour Relations Board, Workers' Compensation Board, Correctional Services. I could go

through a hundred others.

It is simply in a similar light, and this is an Ombudsman function with a public body. He will assist and serve the public as he always does. We are simply trying to bring into our investigative role groups that we have some indirect relationship with now through the government proper, but try to have a better and more effective role by having actual direct investigative power over them.

Ms. Meslin: I think also --

Mr. Carrothers: You do not think there is anything peculiar about children?

1505

Mr. Zacks: We deal with children now in other context, such as young offenders and children who are under care in developmental group homes. We deal with children now and we are concerned about their problems. We would not be shadowing Children's Aid workers in the field or not going to be there to second-guess their actions as to performing their jobs. I don't think that's the role, and certainly the Ombudsman is not advocating that type of role.

What we are trying to put across is that there is a need for a general oversight review of complaints that deal with administrative problems, individual problems that we have jurisdiction to investigate. After the entire Children's Aid process has run its course, that is where the Ombudsman comes in, to ensure consistency, fairness, and that public administration has properly performed its duty.

Mr. Carrothers: So, again, you seem to be speaking more in terms of looking at a system as compared to taking a second look at individual cases?

Mr. Zacks: I think that is how it will eventually be seen, as an overview of the system, involving systemic investigations, rather than individual investigations you currently see come before you. Although, that will not be the way it will work in the beginning. That is my prediction. We will be dealing with specific cases, but the more specific cases we get, the broader the scope will become.

Ms. Meslin: I was just going to say that I think also that the population at large often feels that the ministries or others, knowing that there is an independent agency at the end of the road, tend to have an awareness of it, and I think that the public appreciates that. So even from that point of view.

Madam Chairman: Mr. Campbell.

Mr. Campbell: The last point is I guess the starting point where I have some difficulty in understanding, Mr. Zacks, is that you would not be dealing with individual but systemic problems or solutions to problems when, in fact,

because of the diverse nature of this province and because of the diverse nature of the problems that kids face no matter where they are, that it would end up being individual cases because there is just no way that you can take Metro Toronto's cases and put them in Sudbury. There is just no way you can do that.

I think if there was a choice between the expanded jurisdiction and looking at regulations, as one of my colleagues suggested, you would probably find that same situation would occur and part of the problem that you would find is because of municipalities' differing views of what is a problem, especially in a case where CAS, for example, finds that children in care are declining dramatically. And the municipalities say, "Wait a minute. We are funding at the same level of staff, but we have the children in care declined 20 per cent." Now, you know, there are those kinds of things that that municipality should have and does have the power right now to deal with.

Then, you probably would find that the next situation is that you are into the question of saying to the municipality, "Well, you people have -- as a result of our investigation, we have found that this is happening." The municipality is not funding the Children's Aid Society or the District Welfare Board is not funding the Children's Aid Society to provide that service.

And I am very much concerned that once you start into the municipal field, you are in it for a number of other areas that I am concerned that really to question the municipality's role is outside the purview of the reason the Ombudsman's office was set up. I just wanted to comment on that. I am concerned.

I would far rather have the hospital situation where your operating funds are strictly the Ministry of Health. The capital costs stuff is cost-shared by the community and the hospital or in the Ministry of Health. But certainly the operating stuff which you would have control over is the kind of systemic kind of arguments that you would have. And I guess I am just concerned that if you were going to entertain any regulations or any dealings with that, you would maybe have to hear about AMO's position and other municipalities' positions of saying, "Well, maybe CAS's should be a unit of a municipal welfare system," as some have advocated. And those are the kinds of decisions you would be looking at and we would be looking at as a committee.

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I guess where I am really concerned is given the things I said before and given some of the new information, that you are looking at systemic kinds of things, which really do not apply across the province because of the differences, and given also the recourse that people have through the court system, in the case of hospitals, for example, that you really do not have a lot of, for the number of people that you would be looking at hiring to

investigate this, a lot of situations that you would be dealing with at the CAS level.

I am still not clear exactly what kinds of things you will be investigating that are not already covered by the court system and Child Advocacy. And I understand your arguments; I appreciate your arguments. But what is basically left except questioning the municipality's level of spending in a CAS?

Mr. Zacks: You are making the assumption that once an individual goes through the process, they would not come and complain to us. That is not the case in other areas. They may go through an entire review process and still not be satisfied with the decision that was given to them and then come to the Ombudsman. We could look at the entire process that that person went through and review each independent stage and make recommendations about improvements, if necessary.

Mr. Campbell: I agree. But I take it the other way. You would have far more complaints initially because people would try the system. That does not bother me. What I am saying is with the results as I have seen them is that you question the ministry's ability. That's one thing.

But to question a municipality's ability to do certain things when they basically are doing 20 per cent of the funding and some of the other special service programs are under the municipal jurisdiction, that is what I am concerned with, that this shared jurisdiction here causes some problems under the act, the Child Welfare Act.

Ms. Morrison: Can I just say, there are lots of other areas in which we investigate, in which we come up against a municipality's obligations of various kinds. We do investigations, for example, concerning assessment complaints, how the municipality sets the mill rate. And although we look at fairness of the assessment process and all kinds of things, the original complaint to us may have been one about mill rate, but we do not touch the municipality's involvement to the extent that it sets the mill rate. That is not part of our business.

In Social Assistance, for example, we have jurisdiction over the Social Assistance Review Board. We do not have jurisdiction over general welfare, although the systems are very much, as you know, intertwined. And we have an ability to be able to look at the parts of it that are jurisdictional to us and not at the same time review the municipal decision which might be involved but underlies a certain part of, for example, the SARB decision. I do not think it is a new thing for us to be involved in something which is partly a municipal problem. And we are very sensitive to that.

So, you know, it is not as if this is something that is the only area that we have ever been involved in that has anything to do with municipalities.

Mr. Campbell: Madam Chair, I guess I would say in closing that the assessment rate is for everybody equitably, and really the people feel that because the road does not go by as close to their property as the other one does, that is the reason they are complaining. They are not complaining against the mill rate that has been set. They are complaining against their individual property's treatment, and I think that is different than saying a CAS case, which is, you know --

Ms. Morrison: When you get changes of an assessment bases and that sort of thing, you get complaints which are very much an interaction of the mill rate and property assessments and all kinds of things. It is just, I think, the only point of that is to say that municipal involvement in very much of what goes on in provincial government is there, and we are aware of it and we run up against it quite often.

Mr. Campbell: I guess the last thing I would say, too, is that I perceive it being different of saying a municipality's mill rate and CAS treatment, when in fact a very relatively small proportion of children are in care in any given community. And I guess it just lessens and lessens and lessens your argument for taking over when in fact this seems to be appearing, as the general child population in many parts of the province are declining, generally. Never mind what is in care. In the education system the numbers are declining.

And I guess, you know, I will look forward to your other arguments, but I am still remained to be convinced given the other things that are in place. And I am not talking about duplications. I understand the argument. What I am saying is that you would have a very, very small slice of the pie given the overall procedure and given the other things that are in place already. That is basically where I am.

Thank you, Madam Chairman.

Madam Chairman: Mr. McLean.

1515

Mr. McLean: I guess if it was not for the Ombudsman, a lot of people would probably have been denied justice in Ontario over the last 13 years, in my estimation.

But I guess when I look at the whole situation of the expanded jurisdiction of the Ombudsman, a lot of people in society today do not know where to complain to. The problem we have here with the Ombudsman's office is that there is not much point in complaining to them until the process has been usually followed, and that is the only time they can act on it. That is what bothers me because there are many people, whether it is in the Children's Aid Society or in education or the legal system, that somewhere along the line have wanted to complain to someone and they do not know who to do it to.

Now, I would like to give you just a couple of examples. I had a person in my office not too long ago who had been charged with careless driving. He went through two adjournments in court. The third time he appeared in court, he was told that he might as well plead guilty, that there was nothing they could do, and he was charged \$1,700. Now that person has the right, I know, to go to the Legal Aid Society to complain. But maybe he has a problem going there to complain.

The other area of that item, and I wondered why maybe we should not expand the jurisdiction of the Ombudsman to all of the government agencies whereby when the last appeal comes then they can step in, only in a professional manner, which they have done in the past.

Now, I have had school children come to me and say, "You know, we did not like our teacher. None of the students in that class done very well." Who do they complain to? And then we wonder today why we have so many children that are illiterate. How come? Is there a gap in that process for those students who cannot complain? If they complain to their teacher, they are going to be in trouble.

So maybe when we are looking at the expansion, we maybe should be looking at more than just two or three areas. Maybe there is a way that the Ombudsman's office could be expanded where he can investigate many areas where justice is not being done or seeming to be done.

So I look at the complaints that people have, but the Ombudsman does not get to handle them until it has gone all through the system. There is where the problem is, is who do people really take their concern to? They can take it to the agency, but nine times out of ten, they will not get very far because the agency is so tight that they have their policy and they bluff their way through. So maybe when we are looking at the expansion, maybe we should be looking at something just a little broader, just something where they can come in to different agencies after the process has been followed and review it.

Those are just some of the concerns that I had, and I thought I would like to put them out. You know, maybe the Ombudsman can comment on what I have said.

You know, when I look at the amount of people who have a complaint and they do not know where to go, and really the Ombudsman is in place to go to only as a last resort.

So, you know, I want to repeat again, if the office had not been created, there is a lot of people would not have had justice done. And I wonder if it should not be expanded a lot more than just what we are talking about.

Madam Chairman: Any comment, Ms. Meslin?

Ms. Meslin: I think that would be for the Ombudsman to comment, not for the staff. You know, we do with what we have the best we can, and we certainly feel that we could

probably handle the three areas we are discussing. It would be certainly for the committee and the legislature to make a determination about whether they thought that this organization should be expanded.

Madam Chairman: Mr. Tatham.

Mr. Tatham: Just one comment about the Ombudsman. I have found since I have been elected, I sometimes might put a big goal up.

If somebody has been turned down, after going all the way through on the appeal process, what percent of those that have been turned down have been reversed, where they say, "This is wrong"? Say, in these different areas here under your labour and psychiatric and social benefits, any prospectus on that?

Ms. Meslin: What percentage have we assisted somehow? Is that what you are asking?

Mr. Tatham: Yes, if I had gone all the way through the process, say in psychiatric hospitals, and I have been turned down or whatever the process is, and at the end I go to the Ombudsman and it is swung around in my favour or my satisfaction.

1520

Ms. Meslin: You have to look at it a couple of ways because if you have been turned down and come to us and we give you the reason that you have been turned down and explain it to you because we believe the reason is a good one and you walk away contented, that is one thing. If we look at it and say, "You should not have been turned down, and we are going to go and see if we can do something for you," the person may be happy in another way. Or if we speak to them to the point where they say, "You know what, I do not even want to go any further; I think that is fine," that is another way.

So, percentagewise it becomes a little difficult to say. What we are trying to do is look at a complaint and decide whether or not in our view it is supportable or not. There are too many steps along the way where that complaint can be concluded either with a complainant happy about the conclusion or at least satisfied that we have answered the question, and I do not even know if that means happy because if you say, "Look, the ministry is right. We will explain it to you in every way we can," and they go away and say "Okay, you've explained it." I do not know if they are happy or not, and I do not know how you assess that in percentage terms. There are too many levels.

Mr. Tatham: Say you handle, say, 1,000 people who come in to you. What percentage -- I know what you are saying but --

Ms. Meslin: We like to think that the majority are satisfied, either satisfied that they have gotten what they

asked for or that they have gotten an explanation and they accept that explanation for the ministry doing it right.

Ms. Morrison: I can maybe explain our categories of statistical information are such that we collect information about complainants being assisted. That is where we have assisted them to get either satisfactory information about why they were turned down or maybe a reversal of the decision.

Mr. Tatham: May I ask, how many reversals of a decision? Perhaps that is where I would like to --

Ms. Morrison: We do not keep track of that separately. We only keep track of the fact that we have assisted a complainant, whether we have assisted them by having the decision reversed or satisfactorily explained to them why the decision was the way it was. We do not have that separate information.

Mr. Tatham: Another question, if I may. Where you have reversed a decision, what actions have taken place in the particular area? Have they changed their style of operation, have there been personnel removed or has there been any impact on the area where you say, "Okay, this fellow has been wrongly treated," we are going to say for certain reasons, and you have the decision reversed, what takes place in the organization?

Ms. Meslin: It can be everything from a letter of apology from the ministry to the person, to a change in the legislation; to a money award, to the ministry actually changing a particular action that they took. So depending on what the complaint is, it can be absolutely anything.

Mr. Tatham: Do you have any numbers? Maybe I am too much into numbers, but I would like to know whether you deal with a hundred. Is it ten or one or two?

Ms. Morrison: I can give you these numbers from the 1987-1988 annual report. Complainant assisted, which is defined in our glossary as those complaints where the Ombudsman renders assistance and usually involve tangible, corrective action taken by the governmental organization, that number for the 1987-1988 was 505 out of 4,572 jurisdictional complaints.

Mr. Tatham: One eighth.

Ms. Morrison: Yes, about one eighth. Then, you have to add to that these other categories; recommendations made and accepted, 24 of those. A number of abandoned/withdrawn, our Section 18 investigations, discontinued.

1525

Many times when an investigation is discontinued, it is because a complainant says "That is fine; that is exactly what I wanted to know." Or they are satisfied with that. Those amount to 3,500 complaints.

Mr. Tatham: You have been in business for 13 years. Is there a repeat of the same type of a problem or does the particular organization that has a problem, do they do something about it or does it just come around again and around again?

Ms. Morrison: I think that is what Michael was saying earlier about the main advantage of an Ombudsman process is that we are not there just to solve individual complaints. Having an Ombudsman does a couple of things. Governmental organizations would like to be told where there are glitches in their process so they can fix them, and we do not get the same complaints again. Also, the other thing that happens is knowing that we can come and look at their process, they do it right the first time.

Mr. Tatham: That is the question I am asking. Do they do it? Have they done it? If I have a problem with a particular area, does another fellow come up next year with the same problem?

Ms. Morrison: In a number of areas, we get regulations changed or legislation changed or policies changed so that the same problem does not come up again. Because our recommendation will be not just that the person gets \$10 or whatever it is but that the ministry change its whole approach to that particular problem so that it will not arise again.

Ms. Meslin: In addition, we often will find -- we recently did a systemic study on a housing problem in Moosenee. That was because there was a particular kind of complaint that came to us from numbers of people again and again, and when we looked at it, we said, "It is not just the complaint that we want to look at, which we will do, but it is the system. There is something wrong with the system." And so what we did was a systemic investigation, and we said to the Ministry of Housing and the Housing Commission, "You are doing it wrong. This whole area appears to be working incorrectly. Here are some suggestions for changing it." And they have done so. They have changed a whole series of procedures that we felt were unfair or incorrect or wrong.

So we have that systemic side in addition. I mean, the systemic side, for instance, in corrections, we often get a complaint -- we are getting complaints now from young offenders about the nonsmoking rules, lots of nonsmoking stuff. What we may well do is a systemic investigation about that whole area to see if there is something that could be done to solve the problem, not one individual problem, but a systemic problem.

Mr. Tatham: Thank you.

Madam Chairman: We will go on as Mr. Bell has some questions. I would like to suggest to the committee that we allow the Ombudsman's office to finish its presentation in this area. Then if any questions emanate from that --

I just want to make the point that indeed it looks as though the interest by the committee in the questions it has generated, there will not be the ability to complete all three areas before the end of today, but we will have the Ombudsman's Office back to finish its areas of presentation. And, furthermore, I would suggest for any of those who feel they have to do exhaustive questioning today that we will, after we have heard from those who may or may not be in favour of the Ombudsman expanding its jurisdiction into this area, after we have heard the various arguments that they have, we have the Ombudsman's Office back for direct questioning of any specific points. I just wanted to bring up that there may be more questions and that we will have that opportunity.

Now, Mr. Bell.

Mr. Bell: Thank you, Madam Chairman. The question I have was answered more substantially than it had before we started this afternoon. It is relevant not only to Children's Aid Societies but to the other two, although the New Home Warranty Program perhaps to a lesser extent. And I think the problem the committee that I represent, the problem I have is to get a handle on the question of jurisdiction and the "why" for expanded jurisdiction.

1530

And rereading your paper over the weekend, I think I realize what my problem is. That is the question of expanded jurisdiction started in a general sense, and was, rightly or wrongly, taken by Dr. Hill -- rightly, Dr. Hill put the question. He did not seek it. He put the question after then ten years, "Let us visit the question of expanded jurisdiction," and the focus was local government. And that has been distilled, I guess, is a good word, to three areas. But I do not see it possible, particularly for public hospitals and Children's Aid Societies, to still ignore the general question. Maybe not now. Maybe it is a matter for Dr. Hill when the committee convenes with him either later this next two weeks or in the fall.

But what are some more or do you have any additional reasons for seeking to expand into that area, and in by so doing, and I raised this on Thursday, how do you deal with the question that will be then raised, "me, too," or "them, too," referring to the other local government agencies that are not on the list? Maybe that question is how do you legislate this, if you will? Maybe that combination of statement and question is best left unanswered by you right now.

Can I focus on one that relates to societies, and particularly the Child Advocacy concept that was raised by Mr. Elliot and others. I want to make sure the committee does understand that even though you believe that office exists parallel or should exist parallel and concurrently with your office, nevertheless, either under current terms or in future, you will have jurisdiction over that office. Do you believe you have jurisdiction now?

Mr. Zacks: I think we probably do. I have not looked at it, but we have never had a complaint against it.

Mr. Bell: That was the second question. I hear you when you say, "Well, we do not do the same things because they are an advocate and there is a presumption of a position and we are not." But let us talk about where you become an advocate, as you do in every case where you at some point come to a determination that the complainant's complaint has merit and there should be some adjustment by the governmental organization. How do you proceed concurrently in that context, where you are as much an advocate for, in that case, a child as the Child Advocacy Office would be?

Ms. Meslin: We are an advocate through another process entirely. Let us assume, as we do, that we have jurisdiction over that particular group. Any complaint coming against that group would go through our process, and if we supported the complainant, then what we are saying is on the basis of the information and investigation we have done, we support that particular complainant, or, conversely, we may not support the complainant per se but make a recommendation about the process or the administration.

Mr. Bell: And you have no problems over the fact that given a particular complaint or a substance of the particular complaint, you might be dealing with the identical issues that the Child Advocacy Office would be dealing with or had dealt with?

Ms. Meslin: We may be, yes.

Mr. Bell: You see no problem in that regard?

Ms. Meslin: No.

Mr. Bell: Because of the different process?

Ms. Meslin: That is right.

Mr. Bell: In Dr. Hill's review paper, he gives reference to the need to address under the Children's Aid Society what is in the best interests of the child and the needs of the child are paramount. Other than what you have said today and other than what is in the paper, do you have any particulars of where that current system is not adequately addressing those interests, such that your presence is and your judgment are required?

1535

Ms. Meslin: No, we have not, and the reason that we have not is that, as people have said here today, the area could be so broad or narrow and our experience has been so limited that we could not pinpoint it. We have a few areas that we have mentioned, but until they start coming in, I do not think we can be very specific.

Mr. Bell: One reason I asked that is that Dr. Hill further in that paper makes reference to concerns expressed by certain groups about the role of Children's Aid Societies, and he is no more particular than that in his statement.

Ms. Meslin: I think that if memory serves, he talks about the problem with native children, and I think that that was as a result of the trip he made with the committee to the far north.

Mr. Bell: Lastly, and it applies to everything the committee is going to address, on page 4 of that paper, the Ombudsman expresses a view of what he would hope the prime issues of this committee's deliberations to be. And I must confess, I do not fully understand what he is getting at when he says, describing that issue, "Whether the people of Ontario have been adequately served within the framework of the Ombudsman's current investigative jurisdiction." Can you explain that, at least to me, and further what it means in the context of the three areas we are looking at?

Ms. Meslin: I think he is directing himself to the three areas. What he is saying, it is a general philosophical question, whether in fact we are now adequately serving --

Mr. Bell: It makes no sense, though, when you apply it to the three. That is my problem.

Ms. Meslin: Why?

Mr. Bell: Well, what flows from it? If the committee concludes that the people have not been adequately served, does that mean no to the three areas of jurisdiction? Conversely, if the committee concludes that the people of Ontario have been adequately served within the current framework, does that mean automatically yes to the three areas of jurisdiction? I have trouble seeing where that statement takes us, and because of the importance that he puts on it, I feel it needs some explanation.

Ms. Meslin: Did you want to comment, Gail?

Ms. Morrison: I can just comment that a lot of the discussion this afternoon has been about exactly that point, I think, the efficacy of the Ombudsman function and how it works in general. I think Mr. McLean certainly seemed to suggest in his comments that he felt that a number of people in the province overall had received justice they would not have otherwise received had there been no Ombudsman. I think that is exactly the kind of background that one needs to have before considering whether one would extend the Ombudsman's jurisdiction to some other areas. If this committee felt that in all of these years that no single injustice had ever been corrected by the Ombudsman, then I think they would be foolish indeed to consider extending the jurisdiction to some other area. I think that is the general import.

Mr. Bell: I want to make clear, Dr. Hill is not saying, as best you can ascertain, that if the conclusion is that the people of Ontario have been adequately served or in his words, "are currently adequately served," that is not an automatic entitlement to the three additional areas?

Ms. Morrison: No, but it might be a relevant consideration.

Mr. Bell: No, I do not think that point is in issue.

Ms. Meslin: I think, though, in fairness, you are asking us to respond to something that the Ombudsman may well want to comment on.

Mr. Bell: I guess you can bring that to his attention then.

Lastly, is somebody before the end of the next couple of weeks going to make any further comment on the paper you have given the committee, "Expanded Jurisdiction, A Comparison Between Ontario and Manitoba"?

Ms. Meslin: We have given that to the committee as an assist to them to take to Manitoba.

Mr. Bell: It is yours, your office?

Ms. Meslin: It is our office. Dale Bryant of our office, who is available to the committee, has put it together and will be going to Manitoba and will be pleased to answer any questions.

Mr. Bell: Against the background that Manitoba currently has jurisdiction over CAS with its legislation?

1540

Ms. Meslin: Yes.

Mr. Bell: In 25 words or less, what does it mean in terms of the relationship between the Ontario Office of Children's Aid Societies and the Manitoba Office of Children's Aid Societies?

Ms. Meslin: I do not understand your question.

Mr. Bell: Well, is there a stronger case in Ontario for jurisdiction than there is in Manitoba, absent their legislation?

Ms. Meslin: Dale?

Mr. Bryant: I think what I was trying to point out in that summary there was some of the differences between the Ontario legislation and the Manitoba legislation. They are to a certain extent, apples and oranges. In some areas, the Manitoba legislation is a little bit different in that there is a greater role for the Ombudsman. There is a little different legislation. I have tried to point that out. In

other areas, the Ontario legislation, I might argue, has more reason.

Mr. Bell: That is important. I just wanted to make sure that you do not want the committee drawing a conclusion like the degree of control in Ontario is more than it is in Manitoba, but Manitoba has got jurisdiction; therefore, Ontario should have jurisdiction.

Mr. Bryant: No, I think we are just trying to show that there are differences in the legislation, as well as some important similarities as well.

Mr. Bell: That is all I have for now.

Madam Chairman: Thank you.

Ms. Meslin, would you like to continue with your presentation?

Ms. Meslin: Yes, I would like to have this opportunity to turn it over to Michael, who has updated Dr. Hill's report and who has some additional comments to make.

Michael.

Madam Chairman: Mr. Zacks.

Mr. Zacks: Thank you.

We handed out an eight-page compilation of figures and statistics. Page 1 is entitled "Psychiatric Patients." What we tried to do is update the calculations that we did in Dr. Hill's report to give the committee some bases for interpreting or predicting the type of impact expanded jurisdiction would make on the Ombudsman's office, both in the potential number of complaints and the increase in staff that we would require.

Madam Chairman: Were you thinking of going through all three areas in terms of the impact, the cost?

Mr. Zacks: I don't know. It depends what --

Madam Chairman: I wonder if it might be better -- if it can be, I do not know. I am just looking at your paper -- directed to the Children's Aid. And then as we go through each individual area, you address both the complaints and the secondary form which I see you have given us, which is the estimated cost, with each area. Perhaps that might be helpful. My concern is if you delve into a general one, we may go into the other two areas.

Mr. Zacks: So we will deal with Children's Aid at this time.

Madam Chairman: If possible.

Mr. Zacks: Page 8. In Children's Aid, what we have done is gathered statistics of children in care for the past

three years and applied a complainant ratio of 2 per cent. That is the ratio of percentage of the people who have complained to us, the total population in an institution. About 2 per cent comes from psychiatric, from our investigation of provincial psychiatric facilities. In other words, 2 per cent of the patients in provincial psychiatric facilities complained to the Ombudsman. So what we have done is take that 2 per cent ratio and applied it to the number of children in care to obtain the number of complaints that we would get.

Maybe I will stop there, if there are any questions.

Madam Chairman: Mr. Campbell.

Mr. Campbell: I guess when you are looking at the declining population, I suspect the 1987 figures would be down?

Mr. Zacks: Yes, they are declining, as you can see.

Mr. Campbell: You might find that almost by the time you were in business you would be out of business, if there was another form that these things, the jurisdiction would take. I guess when you distill down the numbers you have a really declining involvement or a declining role. I suspect your complaints would be higher in the first couple of years until people got used to the system. I do not know if you have ever had that experience of expanded jurisdiction where you might find it.

1545

Mr. Zacks: It happens from time to time when new organizations are established by legislation, and I can tell you from my experience when the office was first established, there was a large number of complaints to come and then it diminishes and drops quickly once, I guess, the novelty wears off. You get a full range of complaints involving all kinds of issues, relevant and irrelevant to what we are actually doing. And ultimately, it levels off and remains throughout the system at a lower rate.

Mr. Campbell: To clarify, you are using an established pattern where you have a percentage complaint ratio that is an established pattern in other similar social services areas, i.e. correction, psychiatric hospitals, things like that?

Mr. Zacks: The 2 per cent complaint ratio is for psychiatric, provincial psychiatric hospitals. The overall complaint ratio that get from all governmental organizations that we investigate is .22 per cent.

So this is high. We have chosen the higher one because these are people, who although not institutionalized as they would be in psychiatric facilities, I think to be fair, indicate what it would likely be in our estimation, we use the higher ratio. Corrections was difficult to determine because statistics were very specifically defined.

However, with Workers' Compensation we determined that the number of people who complained to the Ombudsman has remained fairly constant over a previous number of years, and on average .38 per cent complain to the Ombudsman. Of the total number of workers with claims under the Workers' Compensation system, which is around the 400,000 mark, .38 per cent complained to the Ombudsman.

So 2 per cent is a very high percentage, and we chose that just so as not to underestimate but in fact to overestimate the number of complaints that we would likely get.

Mr. Campbell: Would you have the figures, for example, on your education complaints, to the Minister of Education?

Mr. Zacks: No, we have not.

Mr. Campbell: All right. Thank you very much.

Madam Chairman: Thank you.

Any further questions on this particular area?

Mr. Bell.

Mr. Bell: Mr. Zacks, is this intended to be the -- whereas the initial paper in 1986, estimated I think an impact of two additional persons per CAS.

Mr. Zacks: Yes.

Mr. Bell: Your estimate is now what, the same? Still two?

Mr. Zacks: Yes. This was not an attempt to justify what we had already done.

Mr. Bell: Yes, I understand. It is a revisit, and your conclusion is still the same. My concern is you have focused on children in care to get your numbers, but you have not addressed all of the other things that will go on or do go on involving Children's Aid Societies that most certainly from time to time you would be asked to investigate. And that -- and I will not read it outloud -- but if we look at section 15(3) of the act, for example, which recites the functions of a Children's Aid Society, they are numerous, including the basket clause "any other duties given or assigned." What assessment have you made of the potential impact on those other matters beyond children in care?

Mr. Zacks: We do not think that the impact is going to be significant, quite frankly.

Mr. Bell: Why?

Mr. Zacks: Because we currently investigate through the review process a great number of concerns that emanate from Children's Aid matters through the ministry. And we

feel that those types of complaints which would not create a significantly greater increase, we do not have the statistics to bear it up, but it is the sense that we have that it will not be a major impact.

Mr. Bell: And the 2 per cent ratio again is taken from the psychiatric facilities over which you do have jurisdiction?

Mr. Zacks: Exactly.

Mr. Bell: Are there any factors of similarity between the incidence of complaint in that area to the application to Children's Aid Societies?

Mr. Zacks: I can give you various similarities, but to be perfectly frank with you, we picked the highest percentage that we have.

1550

Mr. Bell: Highest percentage of what?

Mr. Zacks: The highest percentage of complaints that we had is in this area of psychiatric.

Mr. Bell: From a known population?

Mr. Zacks: That is right. We picked the highest that we have, and that is essentially the reason for it. There are similarities; there are dissimilarities, but we wanted to err on the side of caution and not to underestimate. So this is the highest population ratio. The lowest, the general one, which I said is .22 per cent. The highest is 2 per cent. We chose the highest.

Mr. Bell: Thank you, Madam Chairman.

Madam Chairman: Thank you.

Mr. Zacks, would you like to continue?

Mr. Zacks: Yes, thank you very much.

Under the column "2 per cent total complaint ratio," you will see the number of complaints that we would get we estimate at approximately 200.

The next step in the process is to try and guess, and I use the word guess because essentially we are picking numbers out of our general statistics that do not have any direct bearing on the exercise of Children's Aid complaints because we have nothing directly analogous, to try and determine what will be the jurisdictional complaint impact. 21 per cent is the percentage of jurisdictional complaints that the Ombudsman receives in terms of all complaints made to the Ombudsman, and you can see that the numbers are relatively low, averaged about approximately 42, 44 complaints per year.

The next step was to try and determine the impact upon staff for investigators. Here is where it gets a little bit complicated. The way we establish our statistics is by counting complaints. The way investigators do their work is by being assigned files. We are making an assumption here to determine the impact statistically by saying one complaint equals one file, and in practice that is not true. In practice, depending on the specific area, investigators will handle a varying amount of complaints, or files I should say. Going through in other areas, corrections investigators will handle approximately 240 files per investigator. Corrections investigators handle even more.

We tried to give you some idea of the impact, so we made that assumption for statistical purposes. This would be very high. Twenty files per investigator is a very high estimation of the number of complaints that would be handled per investigator because a particular file could have literally dozens of complaints contained in it. As a corollary, a single investigator could investigate literally hundreds of complaints with the identical issue.

But for purposes of this exercise, for Children's Aid complaints, we have assumed that one file equals one investigator and one complaint equals one file; therefore, at a ratio of 20 files per investigator, the exercise leads to two additional investigators for the additional impact that the Children's Aid would make.

I am sure that is perfectly clear. I went through the same process of trying to figure out what all this means, but I would be happy to answer your questions.

Mr. Bell: I have a look of skepticism on my face. It is not a surprise to you. I told you that I think you have really understated that potential, and I do not have a reason for it beyond saying when we come to look at public hospitals, your estimate of impact is much larger. Without visiting that with any real particularity now, how can you conclude public hospitals will be that significantly larger impact than Children's Aid Societies when, frankly, I see the potential for increased complaints to be right here, in relative terms?

1555

Mr. Zacks: All we can do is we can give you our impressions based on years of investigating new agencies as they are created. What we have tried is to give you some kind of statistical parameters for approaching this problem, and if you accept these assumptions and these parameters, these are the increase of investigators.

As an example, not to delve too deep into psychiatric complaints, last year our statistics showed that we investigated 96 complaints. Those 96 complaints were investigated by .4 investigators in our office. That underlines the fact that it is very difficult to go from complaints to investigators without making a number of assumptions.

But the statistics we are looking at are all based on individuals, on persons, and an individual can make a dozen complaints about an issue or the individual can make one complaint. But all those complaints would be deposited in a file and assigned to a specific investigator, so an individual investigator can investigate a large number of complaints.

As I have indicated before, for Children's Aid situations, we have assumed one file equals one complaint, which is not the way it works in practice. These figures are actually very liberal assessments, erring on the side of more than less. I know you look skeptical but these are the figures that we are stuck with.

Mr. Bell: You have factored in the duration question in making this estimate, have you?

Mr. Zacks: Actually, we have not factored in durations at all. If you factor in durations, I would think it would be much lower.

For example, 38 per cent of our jurisdictional complaints are resolved within a month. Having factored in it all the fact that 75 per cent of our jurisdictional complaints are abandoned, withdrawn or refused to be investigated on discretion, I have not factored those in because duration times for those, as you will see by looking at our statistics, vary depending on the circumstances.

So as to not confuse and greatly distort the process, I have ignored those factors and have assumed all these files are investigated in the normal course without applying any other factors such as speed, resolutions, that 38 per cent, or discontinued investigations, which a large number will be, but they are not factored in.

The assumption here is each complaint is investigated to its completion. Again, if you factor in the other criteria, you can get even lower numbers, a lower amount of files that would be investigated by investigators.

The Vice-Chairman: Are there any further questions with respect to the discussion on the Children's Aid Society statistics? I think your purpose at the beginning was to begin with the psychiatric situation.

Mr. Zacks: That is the way I organized it, but this is certainly not disruptive or confusing for me. I can see the way the committee is proceeding. When we get to psychiatric wings and public hospitals, after that discussion is concluded we can deal with those statistics.

Mr. Philip: I have a question, Mr. Chairman, which you might consider to be relevant to what is under discussion, and if not, I am sure I can rationalize some way of asking it anyway.

And that is, it strikes me as unusual that there are

only two provinces where the Ombudsman does not have jurisdiction over Children's Aid. That does not mean that everybody else is right and we are wrong, but it strikes me that there must have been some rationale when those Ombudsman's offices were set up to see that it was a necessary function.

And my question to you is this. Have you looked at the possibility of projecting your costs based on the experience of other provinces, the percentage of their total caseload plus their jurisdiction over Children's Aid Societies?

Mr. Zacks: We did not do that for the reasons that the organizations in different provinces by and large are not easily comparable because of the way they are organized and the different approaches that they take. Some offices are quite small. The Manitoba Ombudsman's Office is very small compared to ours, and so is the New Brunswick office.

1600

We did not feel that was a fruitful way of approaching the problem. We believed that it would be best to use our own statistics because they are more easily comparable in terms of how we do our investigations.

Different Ombudsman offices approach their investigations quite differently. Some Ombudsman offices choose not to investigate certain kinds of complaints, which we would. Because of those inconsistencies and divergencies, it was determined not the appropriate basis for making comparisons.

Some provinces do not have CAS's. This is quite true. Some provinces do not have Children's Aid Societies and get their access to the area through the government, which directly services that area. So they would have it directly.

Mr. Campbell: Through the Social Services Ministry?

Mr. Zacks: Through the Social Services Ministry. I believe British Columbia does it that way.

The Vice-Chairman: Is that all right, Mr. Philip?

Mr. Philip: You made a good ruling on that one, Mr. Chairman.

The Vice-Chairman: My understanding from the Chair before she left was that she would like us to continue with your presentation with respect to public hospitals and she is mindful of the fact that we promised the committee we would adjourn promptly at 4:30. She expects to be back before 4:30. She has gone up to accept some calls pertinent to the committee work. This is where we are at.

The other understanding she asked to convey to the committee is that we will start in again on Thursday afternoon wherever we leave off at 4:30 today. We have everything scheduled on a regular basis from now until

Thursday morning.

So if you would like to begin.

Mr. Zacks: We were not going to have any specific presentation on public hospitals. We were going to go right to my very exciting statistics about jurisdictional complaint impact.

The Vice-Chairman: Our solicitor would like to lead off then to give it a little bit of focus.

Mr. Bell: You might have the committee's spreadsheet, if you would, on dispute resolution mechanisms that was briefly reviewed and distributed to the committee on Thursday. It is in your second brief under "Public Hospitals." That is the third page in.

And in Dr. Hill's review paper, he makes reference to certain areas of exclusion and also to the fact that he currently has jurisdiction. Can we spend just a few moments giving the committee members an overview of what you have and what you do not have and what you do not think you should have even if you may have, if that makes any sense.

Mr. Zacks: Can you direct us specifically to what page you are on?

Mr. Bell: The third page under the public hospitals' material, "Dispute Resolution Mechanisms," the flow chart. Now, anybody alone or in tandem.

It is your second brief, the brief dated August 10, 1988. It is your second briefing book under the tab "Public Hospitals," the third page. Not page 3, the third page.

That is Jennifer Wilson's flow chart mirroring the legislation showing potential involvement, et cetera, and/or current involvement of your office.

Now, any of the four of you, the chart at the left-hand side, which is "Public Hospitals Act" on the top and "Position" at the bottom, are you with me?

Mr. Zacks: Yes.

Mr. Bell: This recites that a physician may apply for appointment or reappointment to any medical staff of any public hospital in the province; correct?

Mr. Zacks: Yes.

1605

Mr. Bell: Currently you do not have jurisdiction over what the internal hospital organization does with that application; correct?

Mr. Zacks: Yes.

Mr. Bell: And that goes right up to Board of Directors. And, obviously, if you are granted jurisdiction over public hospitals, this would be an area potentially that you could investigate provided the doctor did not exercise his rights up through the remaining review mechanism; correct?

Mr. Zacks: Yes.

Mr. Bell: Now, currently, a doctor may appeal a decision of the board of directors respecting his application for appointment or reappointment to the hospital appeal board, and, currently, you have jurisdiction over a decision of the hospital appeal board on that matter; correct?

Ms. Meslin: Yes.

Mr. Bell: So currently your jurisdiction, if you will, kicks in, some time after a decision of the hospital appeal board, depending on whether there is a divisional court of appeal or not.

As a matter of fact, this is a lot of years ago now; it has got to be at least ten, eight or nine years ago, your predecessor committee considered in some detail with some public profile an application of a particular doctor to a particular hospital in Toronto for appointment, which was turned down, and, members, a little committee trivia, it is the only time that a complainant to the Ombudsman's Office has ever appeared before this committee in public and made submissions on his own account as to why the Ombudsman's recommendation should be implemented.

Mr. Philip: May I ask a question on that? If there is jurisdiction, as we know there is, why is it not being placed on this flow chart?

Mr. Bell: Well, this flow chart was prepared absent, really, the issue of current jurisdiction, which is one of the reasons I am doing it now, so that everybody has an understanding that the issue of jurisdiction over public hospitals, the Ombudsman is not coming to this cold, if you will. There is already at some various levels. So as for physicians' appointment and reappointment applications, to some degree, it is not a question of whether but when, correct?

Ms. Meslin: Correct.

Mr. Philip: Pardon me, now, that being the hospital review board?

Mr. Bell: Yes.

Mr. Philip: So between the hospital review board and the court you can stick in there an Ombudsman?

Mr. Bell: If you give Ombudsman jurisdiction over the appointment or reappointment, what you are doing, sir, is

you are moving the jurisdictional line down from the decision of the hospital appeal board right down to the application to the administrator.

Mr. Tatham: Why do that?

Mr. Bell: That is the question I think that you have to address.

Mr. Tatham: But why go through if you have got things working and you have got a chance to kick in later on, why do this?

Mr. Bell: I think that may be a question that should be addressed to the Ombudsman's Office, and also you may want to address those questions to any hospital representatives that appear. There are a number of reasons, I think, on both sides of the question that could be given. Do you have anything to add?

Ms. Morrison: In the usual course of events in our office with jurisdictional organizations, if there is an appeal mechanism like this, it is not jurisdictional; it is premature until the appeal has been heard. I do not know why it would be different just because we had jurisdiction over public hospitals.

Mr. Bell: That is a very good point.

The Vice-Chairman: What they are saying, Charlie, is that because there is an appeal process there already, even now they would not hear a complaint until after that appeal process were complete. So if we decide to expand jurisdiction, that would still flow the same way as it is right now.

Mr. Tatham: There would be no change?

Mr. Bell: I think what they are saying is in practical terms it will probably not add to the workload of the office or to the impact on public hospitals because, I guess, presumably, most doctors who are turned down exercise their rights up through the appeal mechanism.

1610

And in any event, by law, section 15(4) of the Ombudsman Act, if you give them jurisdiction, section 15(4), that one that says the Ombudsman may not investigate until the rights of appeal have been exhausted, et cetera -- I am paraphrasing -- if you give them jurisdiction, they could not investigate these lower decisions until the appeal mechanism is either exhausted or the individual makes the deliberate decision not to go up any further.

Mr. Tatham: That's what I am wondering. Does that mean, are you playing games?

Mr. Bell: No, that is just the rules. Nobody is bound to appeal. Nobody is compelled to appeal.

Mr. Tatham: Is there a time line there someplace?

Mr. Bell: Yes.

Mr. Tatham: So if the chap does not take action to go up the ladder, then he or she can go over and see the Ombudsman?

Mr. Bell: Yes, after those relevant time periods have expired. I believe, unless you want to clarify.

Ms. Morrison: Can I just make a clarification?

It is true that a statutory right to review can expire, giving us jurisdiction as Section 15(4) says, but there is also a section of the Ombudsman Act which allows the Ombudsman to exercise his discretion not to investigate a case where there is an adequate alternate remedy. And in many cases where there would be a good remedy, it would not be the Ombudsman's intent to investigate until that remedy had been attempted.

Mr. Tatham: But if a person has said, "All right, I have got three weeks, three months, whatever, to just sit with folded arms," and the time goes up and they come to the Ombudsman and say "Please help me," then what do you do?

Ms. Morrison: It depends upon the nature of the right of review. In some cases, for example, it would be a very expensive thing for a person to take advantage of their statutory right of review. If they come to us and say, "I cannot afford to go that route," we may have to make them wait until the time is expired before we have jurisdiction. But that is because there were good reasons why they could not go that route.

Mr. Bell: One point though needs to be made in terms of the exercise of the discretion not to investigate because of alternative remedies. That is not really terribly helpful because you are not binding the hands of any current or future Ombudsman who may or may not decide to use that section in any particular case. You are speaking in terms of your current, perhaps your current policy now as applied to other similar flow charts.

Ms. Morrison: That is right, but I think that would be subject, possibly, to this committee's questioning at some other date. Supposing a new Ombudsman came along and said, "I am never going to be bothered with turning people away because they have an alternate remedy; I am going to investigate everything in sight," and suddenly this committee in reviewing the annual report or whatever found that decision not to be one that they felt was appropriate, I think it would be open to the committee to discuss that matter.

Mr. Bell: And in practical terms, if jurisdiction was given in this area with a qualification that it not be exercised until the appeal mechanism is exhausted, that

would not affect your office or your ability to deal with specific complaints, would it?

Ms. Morrison: No.

Mr. Bell: In other words, a requirement that a physician do go up through the process until it is exhausted.

Ms. Morrison: That is our exact jurisdiction now.

Mr. Bell: Exactly. Which is the point I think I was starting to or trying to get out. It may be in this very specific area a distinction without a difference.

Mr. Tatham: If a future Ombudsman wants to do what the lady suggests, that's fine. But I basically think that if the appeal process is there and if they can afford to do it they should use the appeal process because I think you are riding two different horses at the same time.

Mr. Bell: That view is held in many quarters, and I think if you examine the policy of the Ombudsman's office in any area of governmental organization of Ontario where there is an appeal mechanism, that office tends to wait until the mechanism is totally exhausted before getting in. And usually the final stage of the appeal mechanism is a body or an agency over which there is no dispute that the Ombudsman has jurisdiction. So that's what I meant, distinction without a difference, in this area, certainly.

Mr. Zacks: Could I make just an observation? We have only ever had one complaint against the hospital appeal board.

Mr. Bell: I am not sure what you can take from that because I sat through that complaint.

1615

Mr. Zacks: That was the first and last complaint that we ever had.

Mr. Bell: The middle chart, under the heading of "Mental Health Act," the first step in that process is physicians' decision, which is subject to a review by the statutorily-defined review board. Well, let me ask you, do you currently have any jurisdiction in this area?

Mr. Zacks: Yes, we do. In the review boards.

Mr. Bell: In all respects.

Mr. Zacks: All respects.

Mr. Bell: You have no jurisdiction over the physician's decision, currently?

Mr. Zacks: Well, it depends where the physician is working. If the physician is employed in a

provincially-operated psychiatric facility as a provincial employee, theoretically, we have jurisdiction over his actions.

Mr. Bell: What do you mean by theoretically?

Mr. Zacks: Normally, if we get a complaint against a particular physician having to do with medical practice or misconduct, the complainant would be referred to the discipline committee of the college, and there would be a review process through the health disciplines board.

So we do not investigate complaints about health professionals such as doctors and nurses or dentists employed by governmental organizations. However, we do have jurisdiction over decisions of the review boards.

Mr. Bell: So to the extent you currently have jurisdiction, either in the provincial mental health facilities or decision of the review board, the discussion we had as for the appointment issue about when you have jurisdiction and is it really any different today is relevant?

Mr. Zacks: Is relevant?

Mr. Bell: Is comparable?

Mr. Zacks: Is comparable.

Mr. Bell: Now, the right-hand side. Do you have any jurisdiction under the detentions?

Mr. Zacks: We used to.

Mr. Bell: You used to?

Mr. Zacks: Yes. That lieutenant governor's advisory review board used to be constituted under the Mental Health Act. Then it was changed about 1981 or so, and it is now constituted under the Criminal Code where there is provisions for that. The reasons, I think, are to get rid of the Ombudsman, and it has worked because now it is established under federal legislation that we have no jurisdiction over it.

Mr. Bell: Are you seeking it back?

Mr. Zacks: It is out of our hands.

Mr. Bell: The committee should know. You are not specifically asking this committee to consider an amendment to the Mental Health Act?

Mr. Zacks: You could not do it anyway.

Mr. Bell: That is right.

Mr. Zacks: So we are not asking you to do anything you cannot do or ought not do.

Mr. Bell: Subject to any omissions in respect to our review of the relevant legislation, that fairly represents the statutorily-defined dispute resolution mechanisms that exist in the public hospital setting?

Mr. Zacks: It does, except I would just add that in provincial psychiatric facilities, there is the Patients' Advocates Program, which is not a statutorily-established process but I think operating out of the Ministry of Health.

Mr. Bell: You may have some jurisdiction?

Mr. Zacks: We do. The point I wanted to make is that that advocates program is what we call an administrative mechanism. We refer many complaints to the advocates because it appears to be the most progressed in place to assist the individual as a patient. Conversely, they refer matters to us which in their advocate's role they feel they cannot properly handle.

So it is a two-way street, but it does have an effect on the number of complaints that the Ombudsman gets. That process, that advocates program, is not in the psychiatric wards of public hospitals.

Mr. Bell: One last area before members of the committee have questions before we adjourn.

In Dr. Hill's paper, he makes the point that insofar as actions of doctors, nurses and dentists, he is not seeking nor is he to have jurisdiction because of the currently available procedures under the Health Disciplines Act, for example. Can you give some definition to the types of activities of doctors, nurses and dentists in the hospital setting over which you are not seeking jurisdiction?

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Mr. Zacks: It is not a question of seeking or not seeking jurisdiction. The fact is that the complaints process for health professionals operates to, in essence, remove certain complaints out of our jurisdiction because they would be premature because there is a statutory right of review available. There are a number of health professionals who are employees of government organizations over which we do have jurisdiction. An example, we do the Workers' Compensation Board, the Ministry of Correctional Services.

Mr. Bell: Just because of the time, what you are saying is because in respect to those things that the Health Discipline Act covers for doctors, nurses and dentists, by operation of law, you will not have jurisdiction?

Mr. Zacks: That is right.

Mr. Bell: The Health Discipline Act is generally considered to have jurisdiction over the particular health

discipline's practice of the particular profession? In medicine, it is the practice of medicine. In nursing, it is the practice of nursing. And in dentistry, it is the practice of dentistry.

Mr. Zacks: Yes.

Mr. Bell: Are you saying that insofar as medicine, nursing and dentistry are practiced in public hospitals, by operation in law, your office will not have jurisdiction unless it comes to the office through the Health Disciplines appeal procedures?

Mr. Zacks: Not necessarily. It gets a little complicated because there are time limits upon which you can complain about a doctor's actions.

I think there is a limitation period. If there is not a limitation period, then the answer to your question is yes, we wouldn't investigate until that complaint went through the Health Disciplines complaint process. If there is and that limitation period expired, we could investigate that complaint.

Mr. Bell: Can we give it a specific example that surgeon A, performing operation B in hospital C, any complaint of the patient in respect of anything that happens during that operation will not be within your office's jurisdiction to investigate?

Mr. Zacks: Yes, subject to what I said. You may correct me. If there is no limit -- I thought there was a limit.

Mr. Bell: The limitation period under the act is two years for the commencement of an action for civil damages. There is a limitation period, but it is a cause of action limitation period.

Mr. Zacks: That's right. We would have no jurisdiction, in essence.

Mr. Bell: That clarifies a very great body of activity under public hospitals. I have no further questions this afternoon, Madam Chair.

Madam Chairman: Just noting the time, I wonder if it might be appropriate to reserve the committee decision until the next time the Ombudsman comes before us? We have an opening Thursday afternoon from 2 until 4:30. I would suggest that you return at that time and continue with the areas of expanded jurisdiction. I understand that is acceptable to you to come then.

The second thing is we are resuming tomorrow morning 10 o'clock, and we have, as per the agenda, the Ministry of Consumer and Commercial Relations coming in the morning and the Ministry of Community and Social Services in the afternoon to present their position or their understanding of expanded jurisdiction in these areas.

Mr. Bell, you had one more thing?

Mr. Bell: For Thursday afternoon, Ms. Meslin and others, we have seen what you have jurisdiction over now. We have just heard what you will not have jurisdiction over. Can you take a look at the issue of what is left under the public hospital setting that you will likely have jurisdiction over so that the committee can have some discussions with you in a specific way?

Madam Chairman: That is a yes?

Mr. Zacks: Yes.

Madam Chairman: Mr. McLean, moving adjournment? Do I hear second? Thank you. Adjourned until tomorrow morning at 10.

The committee adjourned at 4:25.

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STANDING COMMITTEE ON THE OMBUDSMAN
EXPANSION OF OMBUDSMAN'S JURISDICTION

TUESDAY, AUGUST 16, 1988

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Bryden, Marion (Beaches-Woodbine NDP)
Carrothers, Douglas A. (Oakville South L)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
Mackenzie, Bob (Hamilton East NDP)
McLean, Allan K. (Simcoe East PC)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella
Tatham, Charlie (Oxford L) for Mr. MacDonald

Also taking part:

Philip, Ed (Etobicoke-Rexdale NDP)

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Ministry of Consumer and Commercial Relations:

Webber, Bernard, Assistant Deputy Minister, Business Practices Division
Lewis, Ralph H., Legal/Policy Adviser, Business Practices Division

From the Office of the Ombudsman:

Meslin, Eleanor, Executive Director
Zacks, Michael, General Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, August 16, 1988

The committee met at 10:00 a.m. in committee room 151.

EXPANSION OF OMBUDSMAN'S JURISDICTION

Madam Chairperson: We are ready to call this meeting to order. This is the Ombudsman's order, and we are dealing with the issue of expanded jurisdiction. We have before us Ms. Meslin and Mr. Zacks from the Ombudsman's office, and appearing before us on the issue of expanded jurisdiction from the Ministry of Consumer and Commercial Relations, Mr. Bernie Webber, who is the Assistant Deputy Minister of Business Practices Division, and Mr. Ralph Lewis.

Does anybody from the committee have anything to discuss before we begin today? We have a presentation which you have been given a copy of, and we will permit you to go through that today and open it up for questions from the committee after that. Thank you. Mr. Webber?

Mr. Webber: Thank you, Madam Chairman. Our ministry appreciates this opportunity of appearing before your committee. It was my understanding that representatives of the warranty program have been invited to attend next week. I would therefore leave it to the program to present its own position and details of its programs.

My focus will be on the history of the program, its governing statute and its relationship to the Ministry of Consumer and Commercial Relations. The Ontario New Home Warranties Plan Act was passed in 1976 and proclaimed on January 1, 1977. The statute has two main objectives. The first is to create a series of warranty benefits for purchasers of new homes. The second is to create a body governing specific aspects of new home building in the province.

The Lieutenant Governor in Council has given the authority to designate a nonprofit corporation, incorporated without share capital as its administrator. The Act requires that all builders be registered and that all new homes be enrolled. These provisions are unique in Canada. We believe that only three jurisdictions in the world require that all builders register and that all homes be enrolled and therefore protected. Only Ontario, New Jersey and the State of Victoria in Southwest Australia have this provision.

In the spring of 1976 an independent nonprofit corporation known as the HUDAC New Home Warranty Program began operation. This organization registered builders under a voluntary scheme which paralleled the provisions of the Ontario New Home Warranties Plan Act passed later that year. Upon passage, HUDAC was designated as the corporation for the purposes of the Act.

It has continued in that capacity since that time and now carries the name of the Ontario New Home Warranty Program. The board of the warranty program consists of both builders and representatives of other interests including the Ontario Government. Amongst the groups represented are insurers, lenders, municipalities, the Consumer's Association of Canada and our own ministry.

The program is financed by fees paid on enrollment of new homes and by registration fees paid by builders. The enrollment fee, although paid by the builder, is frequently passed on directly to the purchaser. Government has never provided seed money or funding to the warranty program. Both the management and daily operation of the program remain independent of government.

There are, however, several ways in which the ministry interacts with the program. First, as I have mentioned, a representative of the ministry sits on its board of directors. Second, under the provisions of the statute, the program reports annually to the Legislature through our minister. Third, all decisions affecting builders and purchasers are subject to review by the Commercial Registration Appeal Tribunal.

The mandate of the program is to provide deposit protection and to act as a construction guarantor on behalf of the purchaser. To implement this mandate, the program carries out two key functions. As a governing body for builders, the mandate of the program is to ensure standards in the industry. To do this, the statute provides it with power to deny or revoke registration where the builder is not financially responsible - where the past conduct of the builder affords reasonable grounds for believing it will not act in accordance with the law and with integrity and honesty - and where the builder does not have sufficient technical competence to consistently perform its warranty obligation.

The program therefore has significant control and influence over builders including the ability to deny or revoke registration and to impose terms and conditions on their building operations.

The second and equally important function of the program is to assist the purchasing public in resolving problems with builders. Although its function is that of a dispute resolution mechanism, the program is in turn subject to the outside controls that I will outline in a few moments. The program receives complaints from purchasers, mediates disputes and when requested, enters into formal conciliations at which time both builder and purchaser are present and the home is inspected. All decisions of the program are in writing, and where requested, second and even third conciliations can take place. Should purchasers or builders wish a review of the program decisions affecting them, two avenues are open.

The first is the statutory right to appeal a program decision to the commercial registration appeal tribunal. The

tribunal is a quasi-judicial body whose function is to hear the cases of purchasers dissatisfied with the findings of the program. This right is available to all new home purchasers. The tribunal which reports statutorily to our minister also has jurisdiction over appeals from builders on registration matters.

In its decision, the tribunal may order the program to take such action as it feels is appropriate and may substitute its opinion for that of the program. Decisions of the tribunal may in turn be appealed to the Supreme Court of Ontario where they are heard in the divisional court. The second avenue of relief for purchasers is by way of informal appeal to our ministry. Some new home buyers write directly to the minister asking that he look into their particular problems. So far in 1988, 52 purchasers have taken this avenue.

Although many letters contain entire inquiries or discussions, others are direct requests for assistance or copies of letters sent to the builders or to the program. On receipt, our ministry staff contacts the program making it aware of the situation and requests a report as appropriate. The situation is then followed to the point of resolution or to appeal using the provisions of the Act. Frequently problems brought to the ministry have not yet been brought to the attention of the warranty program. In other cases, purchasers write the ministry instead of pursuing their right of appeal under the Act.

The important thing is that letters do give the ministry a purchaser's eye view of the program and are very helpful in our discussions of mutual concerns. Turning to another matter, there is one anomalous aspect of the Ontario New Home Warranties Plan Act which I should draw to your attention. Under the existing Act, the program's board of directors may pass bylaws which, when filed with the registrar of regulations, take effect as regulations. The ministry in its review process is strongly considering the fact that this power may be too broad and that it may not be appropriate to allow the program to continue to draft its own regulations.

I would now like to turn to the Ombudsman's position paper and to the ministry's view of that paper. The Ontario New Home Warranty Program is a third party to the purchase and sale of a new home. Primary responsibility for defects in construction lies with the builder, and traditional remedies, including the courts, are available to all purchasers. The warranty program acts as a guarantor only and as an additional avenue of recourse available to the purchaser in the resolution of disputes. The Ombudsman's paper states that only some cases may be appealed to the Commercial Registration Appeal Tribunal.

In fact, the practice is that all cases may be appealed to that body. This means that a consumer who has a problem with a builder may turn first to the warranty program and, if still dissatisfied, may appeal in turn to the tribunal. I have already indicated that some consumers

choose to go directly to the ministry when dissatisfied. In both of these cases, whether the matter is assisted by the ministry or dealt with by the tribunal, the Ombudsman has full jurisdiction.

The Ombudsman refers in his paper to a case dealt with by this committee in its 11th report. The case resulted from an inquiry by the Ombudsman into a decision of the tribunal. The committee recommended changes to the governing regulation and payment to the party involved. Both were done. We are also of the view that the ministry has ample oversight with respect to the warranty program. In addition to having a representative on the board of directors and the obligation of reporting to the Legislature, all program decisions are subject to the Commercial Registration Appeal Tribunal's jurisdiction.

In addition, the ministry has an active liason with senior officials of the program. Staff of the ministry monitor warranty program activities and make recommendations for improvement. An example of this is the consideration being given to a proposed change to the regulation making power, to which I have referred. I should add that although the warranty program remains independent in its ability to make regulations until the statute is changed, in practice there is an active process of consultation.

Notwithstanding this close contact, the program remains independent in its day-to-day operation. It is worth noting that it is the only legislatively-based home warranty program in Canada. Purchasers in other provinces do not have similar protection. Although it administers a statutory plan, the program receives no funding from the government and does not benefit from any government programs. The program remains a private corporation. It is not a government agency.

Its mandate is to preserve a fair and even balance between builder and purchaser while showing a specific concern for the needs of the purchaser unable to protect himself.

When program officials attend before you, you will be given a full briefing on the daily activities of the warranty program. However, I would like to point out that the warranty program has now enrolled over 506,216 homes, performed over 34,000 conciliations and made payments on claims in excess of \$34 million. In our view, given this volume and the minimal number of complaints made to the Ombudsman, there is little evidence of a compelling public interest to provide additional appeal procedures.

The warranty program is an example of how the public may be served and an industry's practices regulated without public expense. We feel that the warranty program has functioned well and has shown that it will function well in the future in the best interests of new home purchasers. However, we are always seeking improvement, and the regular meetings between ministry and new home warranty staff focus on processes to bring even more effective protection and

service.

Thank you for this opportunity to present our views.

Madam Chairperson: Thank you, Mr. Webber. Mr. Philip is first on the list.

Mr. Philip: I can tell you, sir, that your statement on page 12, "There is little evidence of compelling public interest to provide additional appeal procedures," could easily be refuted if you simply pull the file of my correspondence to your various ministers over the years complaining about the program and documenting case by case about constituents that have certainly not been satisfied with the program.

Indeed in those years when I was a critic of housing, other people's constituents were not satisfied. But let me deal with some of the points in your statement. You say the board of the Home Warranty Program consists of both builders and representatives of other interests including the Ontario government's and then you go to list them.

I wonder if you could supply to the committee the board of directors and the biography as to what background they in fact have. You say that there is somebody there from the Consumers Association of Canada. That is certainly better than you have on your present insurance board, but I would like to see just how much consumer representation is on there, I guess, and the best way to do that is for you to provide a biography to us.

You claim that the program is running efficiently. I am wondering if you as a ministry have ever taken the time to do a value for money study, audit, an efficiency study of any kind on the HUDAC Home Warranty Program, and if you would be willing to table it with the committee.

Mr. Webber: Thank you, Mr. Philip. I do have a listing with me of the board of directors, although I don't have what you call a complete biography of them. I have their names and the particular firms they represent.

Mr. Philip: I don't want to know how many kids they have and what they do on Sunday afternoons for entertainment, I just want to know what their background is.

Mr. Webber: Okay. Secondly on the question of the value for money, there has been no, to my knowledge, formal review of a value for money sense of such a program, given its arms length distance from us. But we are aware of the various operational efforts which the board of directors of the plan of its current management are making to address some of the problems of the past which you indicate and which we don't deny may from time to time exist.

I suggest that next week on Thursday when the program president and registrar and chairman of the board are here, you might address that problem further. In terms of the makeup of the board of directors, I do not have this

particular list typed for the benefit of the Clerk, which I shall provide later.

For your information, the chairman is Ernest Assaly from Assaly Construction in Ottawa; Peter Burns from Urbandale Realty Builder, Ottawa; Mr. Ralph Lewis, solicitor with the Ministry of Consumer and Commercial Relations and who is with me here today; Mr. Bill Clarkson from the Toronto Dominion Bank; Mr. Tom Cochrane construction builder; Mr. Peter Goring from a development corporation; Mr. Hugh Heron from Heron Homes; Joan Huzar who is vice-president of the Consumers Association of Canada; Marcel Lalonde, again a developer; George Milla, construction; Colin Parsons, construction; Maureen Prinscloo, controller, City of Scarborough; Reginald Ryan from the Canada Mortgage Corporation, and Warren Wolfenden from Sifton Properties of London.

Mr. Philip: So basically out of the list of the board of directors, you only have a possibility, if I heard you correctly, of three that would not be directly from the development industry itself.

Mr. Webber: If you count the lenders and mortgage providers and so on within the industry.

Mr. Philip: You talk about the ability of someone to appeal to the Commercial Registration Appeal Tribunal. I have helped constituents with that. One of the purposes in having an Ombudsman throughout the world is that it allows the little guy who does not have legal fees to appeal decisions which he considers to be arbitrary or unjust. That is the rationale for having an Ombudsman, because there is very few things, no things that I know of that the Ombudsman now investigates and passes judgement on, that a person could not take to court if they had enough money and wish to go the legal route.

So your suggestion that someone can go to the courts is not unique to anything else that the Ombudsman does. But your suggestion that they can go to the Commercial Registration Appeal Tribunal I think is an interesting point. Would you agree that if a person is going to be successful in going to the Commercial Registration Appeal Tribunal, that he probably should have a lawyer with him when he goes there?

Mr. Webber: That is a judgement that would be difficult for me to make. The proceedings aren't far less formal than a court, and many cases are presented without legal counsel and successfully decided on behalf of the consumer.

Mr. Philip: Well, perhaps things have changed when I appeared a couple of years ago for some constituents because as you say it is far less formal than in a court. I am not a lawyer, but I have appeared in small claims court, I have appeared in county court on behalf of constituents, and I can tell you that the Commercial Registration Appeal Tribunal is a lot more formal than any other tribunal that I

have seen with the exception of citizenship, which is actually a Federal Court.

When I walked into that, I thought that I died and had gone to heaven and that Saint Peter was up there with two other judges there that were going to pass judgement on me because I got a crook in my neck looking up. Then I realized that the head judge could not possibly be Saint Peter because it was a former conservative cabinet minister who had been defeated. He smiled and looked fairly friendly so I relaxed a little bit.

But on the other side, was the lawyer for the HUDAC Home Warranty Program, a lawyer who imputed the motives of the witnesses, neighbours that the person had brought, to say that his basement did have a crack in it, and I can tell you that that was a lot tougher than most court cases that I have seen either in the Etobicoke courthouses to a point where at one point the chairman had to say well, you know, these people are not on trial. They have given you their points of view, they have told you their answer three times. Would you mind stop repeating that they are trying to do a favour for a neighbour, that they are a friend of the neighbour, or that they have some kind of motives in appearing here as witnesses.

I can tell that you if I were an ordinary home buyer, perhaps somebody that did not speak English all that well, that I would be very intimidated by that process and indeed that it was not the kind of process which even the Worker's Compensation Board would use or even a person applying for an R license at the transport board would have to go through. It was an excruciatingly painful process for this fellow and his neighbours who were simply trying to get some justice for his house.

I ask you then, do you really feel that the route of the Commercial Registration Appeal Tribunal with its formality and with a litigation lawyer on the other side fighting the case with all kinds of experience but also legal experience really does that not stack the odds against the applicant?

Mr. Webber: Well, I believe the tribunal is quite impartial and therefore I would not say stack odds, but I would point out that the new plan of attack of the warranty program - I believe and you can ask officials next week - is to try and keep cases away from that tribunal by providing a more thorough and competent conciliation service or satisfactory one.

Beyond that, I think the program would perhaps comment on the extent of those changes. The question of a person appearing under disability of language, as you suggested at the tribunal, is indeed a concern. To that extent, it went against the wisdom of some whom who have had counsel. I also believe an individual could find out in advance the nature of the presentation that was to be made and therefore could be aware of whether counsel would be appearing on behalf of him.

Mr. Philip: Maybe you could answer this question. Why would HUDAC need counsel? No other government agency, and I admit that they are not a government agency under the statute, I realize how they are set up, but they do not require counsel. Any other body that I know of simply has the public servants, in case the inspector would go in and explain what he saw, and--you know. Why do you go to the expense of a highly paid litigation lawyer--they are not all highly paid. Some are very capable and are very poorly paid.

Mr. Bell: Do you care to name names?

Mr. Philip: It is stacked against, and I suggest, Madam Chairperson, that it would be very useful before this committee made a decision for us one by one or maybe in twos to go and sit in at the Commercial Registration Appeal Tribunal and just see just how formal it is and see how intimidating it is to the applicant. I think that that might have an effect on our judgement on this matter.

Madam Chairman: Mr. Philip, before you go on, because I see you moving a little bit off this issue, Mr. Campbell did have a supplementary on the point of cost of the review of appeal. At that point he was trying to ask a question, so before you continue, perhaps you can continue.

Mr. Campbell: The question I had was subject to whatever happens in a tribunal hearing, that is it not true that the Ombudsman's office comes in after that fact? After the decision has been made, doesn't it fall to the Ombudsman at that point?

Mr. Campbell: After the decision has been made, does it not come under the Ombudsman's jurisdiction?

Mr. Zacks: Yes.

Mr. Campbell: So what you are saying is this is an intermediate step and it would fall under the purview of the Ombudsman once that decision had been rendered?

Mr. Webber: Yes.

Madam Chairperson: So that the Ombudsman would not necessarily deal with this until after it had gone to the Commercial Registration Appeal Tribunal, but then again keep in mind that it is still within our consideration if we decide to expand, at which point the Ombudsman's jurisdiction comes.

Mr. Campbell: I appreciate that, Madam Chair. What I wanted to clarify in my own mind, that that was in fact true, that there was recourse after this appeal tribunal and that it would naturally fall under the Ombudsman. That is all I really had. I wanted to clarify my own view.

Madam Chairperson: Any further questions?

Mr. Philip: A complaint I have by some of my friends who are in the construction industry is that they pay the premiums and that they never have a claim against them and it is always those other guys then that are running up all the bills. Of course their follow-up is that the government does not do enough to pull the bad guys out of the business. I am wondering if you can tell me how many companies have had their certification, is it, or license removed on the grounds that you have listed on pages 4 and 5?

Mr. Webber: Mr. Chairman, I do not have that number with me, but again, I am sure that the folks from the warranty plan next week would be happy to provide that information.

Mr. Philip: If a company is a private company, is it fair to say that they can form any form of conglomeration in the way in which they set up the company or could be a numbered company, it could be a partnership?

We have had cases that the minister was concerned about, when we have reported them to him, of a company having its license pulled and of the same people in a different form, building an apartment building across the street under a different name, and I am wondering if you can give us the technical answers as to whether or not it is possible for the bad apples to simply reappear through their mother-in-laws, through their friends, through joint ventures, through mortgage arrangements and/or even as staff of a company that they may have a silent ownership of or partnership in.

You know, the important thing is not to keep a company from operating but to keep the bad people in those companies that have committed offenses from operating, and I am wondering if you can tell me how do you get those out of the business? Are there ways around it?

Mr. Webber: Again I believe, Madam Chairman, this is a matter which the home warranty program might answer, but I can only observe in passing that that is a difficulty of administering business in our country, and I would imagine that the Ombudsman would run into similar problems if the scope was extended further.

Mr. Philip: Well, I think there could be amendments to the Corporations Act that at least in terms of corporations, that might have prevented the Cadillac Fairview flip and a couple of other things which I realize are not related to your program, but I think I would certainly be interested in having HUDAC answer these questions.

Perhaps what I am doing is putting on the record what I hope they will be able to provide information on. You have talked about regulations and that you may in fact be revoking the right of the warranty program to make its own regulations. Are there any regulations which they have passed recently that have provoked this action on your part that you feel were unfair or unreasonable and therefore would compel you to want to take that program, that route?

Mr. Webber: No, I think on the contrary. The working relationship with the program is quite close, and as I indicated in my remarks, regulations which they enact in fact in all cases are prediscussed with us. I draw to your attention the recent extensions of coverage, which the plan announced and the minister I believe made reference in the House a few weeks ago.

I think perhaps the concern we have is more with the anomaly of law involved which again I have indicated in my remarks. The attention to this particular matter and other structural matters of the board come through our legislative review program.

Mr. Philip: Can you obtain for the committee over the last two years the number of complaints that have--I am sure you have computerized in the ministry -- the actual number of complaints that you have had against the program?

Mr. Webber: We can come close, but I think that sometimes these complaints are a phone call which results in virtually no record because there is a misunderstanding involved and communication gets straightened out and so on. So I am not certain that we can ever provide a number that is 100 per cent accurate. We can certainly provide for you a number that indicates the scale of the intervention.

I did indicate in my remarks that there were maybe some 52 this year, which is six months worth in the year so far, so one could impute 100 a year.

Mr. Philip: So if the Ombudsman in fact were to get involved, you would only be talking right now in the vicinity--and this was a hot building year so one could expect that it would be a heavy year--to increase his case load by maybe 100 cases?

Mr. Webber: I would believe that people will still avail themselves of the right to write government and, therefore the number that were unresolved as a result of that, that would be perhaps 2 or 3 out of a hundred at which case the Ombudsman would be looking at a very small number indeed.

Mr. Philip: And can the Ombudsman refresh our memory as to exactly how many non-jurisdictional complaints he may have had against the Home Warranty Program?

Mr. Zacks: It is very few. I don't have the figures in front of me, but I would guess less than 1,000 a year, it would get against the program itself, and of course we tell individuals we have no jurisdiction, and we would refer them on to the Commercial Registration Appeal Tribunal or to the ministry, whatever was felt to be appropriate for the particular case.

Mr. Philip: I guess it is the sticky, nasty cases that stick out, and I guess my question would be to you and to the committee, the question I am asking myself is if, as I

recall, and here is where I disagree with your statement on page 10, where you say that the ministry has in effect an active liason with the senior officials of the program, et cetera, et cetera.

That may well be the case, but I can recall examples where Frank Drea actually told them to do something and where they refused to do it, and anybody that says no to Frank Drea I think has certainly a lot of courage, but it certainly would indicate that HUDAC has said no to a minister let alone to officials of the ministry. Would you agree with that?

Mr. Webber: I have no knowledge of that particular case, but it is of course technically possible that the plan would disagree with the minister on a particular decision, as I indicated in my remarks. It is an independent body.

Mr. Philip: And I am not talking about the resolution of the case, I am talking about policy. I guess the question then that I will leave you and the committee with is if we are talking about a very small number of cases, if we are talking about some very difficult cases though that occasionally seem to drag on for days and days and months and months and even years, if we are talking about very little addition to the Ombudsman's staff in order to handle this kind of thing, why not give the home buyer the added protection since it is not going to cost very much more and since it really is a system that would be easier for the little guy, the guy that does not have to ask a lawyer then to act on his behalf? Why not?

Mr. Webber: Well as you have indicated, it is a question for the committee, not for me.

Mr. Philip: And one last question which the home warranty program will no doubt want to supply us with, and that is I want to know the time lag now between the time in which a complaint is lodged and the complaint is resolved, and I guess you don't have that, but I hope that the warranty program will supply that kind of information. The same way as we require of the Ombudsman to supply those statistics.

Thank you, Madam Chairperson.

Madam Chairperson: Thank you. We have a representative from the Ontario home warranty here today, and I am sure that they have taken note of that.

Mr. Philip: They used to work with me on the federal government.

Madam Chairperson: And we go to the next person, Mr. Tatham.

Mr. Tatham: Madam Chair, what we are trying to do is establish a means and method for people to make sure they get a house or a home, that is free of error and problems. I just wondered, do buyers know the process of appeal when a

person goes to buy a home today? Is there some type of document that is given to them so they know what they can do in case they do have a problem?

Mr. Webber: We are very pleased with some of the recent educational material which the warranty plan has produced and provided to the home purchasers at point of sale. You can have details of that again next week.

Mr. Tatham: So a person who buys a home from whatever, they will be given a document setting out exactly the process?

Mr. Webber: The purchaser that has a complaint gets advice from the warranty program in writing for the process that is to be followed.

Mr. Tatham: Mr. Philip made a comment about the warranty. It is a rather formal affair. What percentage would have legal help?

Mr. Webber: The warranty program may have that number, and if they don't, I am sure between the Commercial Registration Appeal Tribunal staff and ourselves, we will attempt to get that.

Mr. Tatham: I am wondering, if, as you mention, the fact was mentioned that after this is all completed, the appeal process completed, if there is still no satisfaction, the Ombudsman can then take over; is that right?

Mr. Webber: Yes.

Mr. Tatham: I wonder if it would be better if the Ombudsman takes over every complaint that happens in the province of Ontario, the municipal level, the hospitals or whatever, but perhaps if there are dollars available to be spent, it might be better to give it to a lawyer at the appeals process to do it rather than have an Ombudsman come in. Does that make sense?

Mr. Webber: Something for the committee to consider.

Mr. Tatham: In other words, I think what we want to do is that in the building industry in most cases of the 990 times out of 1,000, there are people trying to do a good job but every so often you get a bad apple and that spoils it for somebody else. Is there some way to resolve this because you get more appeals and more appeals--let's make it appealing in such a way that it happens without a lot of entanglement.

Madam Chairperson: Thank you, Mr. Tatham. Mr. Pollock?

Mr. Pollock: Yes, thank you, Madam Chairperson. A few things I would like to just know for sure. Are a lot of the problems relating from people dissatisfied because of poor workmanship or is there in some cases poor material?

Mr. Webber: There can be both. Of course during the

recent boom, the building boom, in housing of course the availability of skilled labour has stretched the limit, and therefore not surprisingly, the problems of what we call shoddy workmanship shows up in increasing frequency, but it could be a materials problem as well.

Mr. Pollock: But basically you would say it is lack of skilled workmanship that causes most of the problems?

Mr. Webber: That is my impression. The officials of the plan may be able to discuss that further next week. That is certainly my impression.

Mr. Pollock: And the \$34 million that was paid out, did that all come out of the fees that were paid in by the different groups?

Mr. Webber: Yes.

Mr. Pollock: There was no liability suits resulting from some poor materials or that sort of thing? It was all that \$34 million was totally out of the fees paid in?

Mr. Webber: To my knowledge, strictly from those fees. There is a recovery program where the plan has to go after particular individuals in the industry and so forth for faulty performance, but I think that would be a very, very small percentage.

Mr. Pollock: In other words, they really don't try to recoup any of those or penalize those people at that point who actually used or supplied poor materials?

Mr. Webber: No, I'm sorry, they certainly do try to recover. There is a vigorous attempt to do that, but I think as a percentage of the \$34 million, I believe you would find it quite small. Again the officials next week could give you a specific percentage of that.

Madam Chairperson: Thank you, Mr. Pollock. Mr. Carrothers.

Mr. Carrothers: Thank you, Madam Chairman. I wanted to get a better fix on the nature of this company in my own mind. You say it is a nonprofit company, the Ontario New Home Warranty Program. Who are its members or shareholders? Who are actually controlling it?

Mr. Lewis: The formal member, because it is a nonprofit corporation, is the Ontario Home Builder's Association, and its role really is to appoint the directors. However, when it comes to the appointment of the representative directors, for example the representative of the consumers association, they check the name from the association itself.

Mr. Carrothers: So it has one member who appoints the directors, and is the structure of that board in some way mandated by the bylaws of the company to get the kind of representation that we have?

Mr. Lewis: Yes, it is.

Mr. Carrothers: Now this company administers the warranty plan which consists of a deposit guarantee fund and a compensation fund?

Mr. Lewis: Right.

Mr. Carrothers: And the terms and conditions of the compensation fund are set out in the Act which we have a copy of here. It would make them a little like an automobile insurance company in that an automobile insurance company operates a policy which is mandated by law under the Insurance Act the terms and conditions which in most cases I think are mandatory and the company is set up to collect the premiums and administer and pay out claims.

I note that they exclude the Insurance Act here, but it is about the same, is it not?

Mr. Lewis: I can only answer that it is a layman's analogy, and since I cannot speak for the details of the Insurance Act, but essentially it is a form established to meet the cost and operation of contingent liabilities.

Mr. Carrothers: I guess what I am getting at is what this act does, and really all it is doing is it sets up a plan that says there is going to be a company that administers a compensation fund and then we have one. Just one member who collects and administers that fund. So it is completely separate from the ministry in that way.

I am trying to get the picture of the government boards and agencies and how the Ombudsman's role would fit in and analogies as to what it does in other areas. So it operates a bit like an insurance company except it is not under the Insurance Act for whatever reason.

Madam Chairperson: Mr. Pollock has a supplementary at this point.

Mr. Pollock: Just on that same line as Mr. Carrothers' comments, do these contractors, do they pay a set fee or is there--if you have a poor track record, do you pay more? That is what I am trying to get at?

Mr. Lewis: The present practice is that there is one set fee. It is established by regulation and it is based on a sale price of a home as a percentage fee. It is 2 per cent of the sale price of a home at the maximum--the fee I believe is 2 per cent of the sale price of the home with a maximum of \$1,000.

Mr. Pollock: Nobody is penalized if it has a poor track record?

Mr. Webber: I think that is not a correct conclusion. If indeed there is a poor track record, the warranty program can put terms and conditions on the operation of the

company. For example they could limit the number of units that they are allowed to build at a certain time. They come under a different level of scrutiny from the inspectors, so the known bad actors, so to speak, are watched much more closely. It does not relate specifically to the fee they pay.

Madam Chairperson: And Mr. Philip on this point.

Mr. Philip: I was going to ask for the comparison of the Worker's Compensation Board where the employers pay for what amounts to insurance, and then the board pays out to those employees that are injured. Is there any difference to that other than the fact that under this program, the premiums are not related to the number of payments to claimants? Are there any other major differences in the way in which it is set up?

Mr. Webber: Madam Chairman, I am not sufficiently aware of the ins of the particular regulations and the setup of the compensation board to carry the comparison. I'm sorry.

Mr. Philip: I am working on Mr. Carrothers's line of questioning which is is this closer to a private insurance company or is it closer to the Worker's Compensation Board which the Ombudsman does have jurisdiction over.

Madam Chairperson: Mr. Tatham?

Mr. Tatham: I wonder, in a municipal business if you have a contractor who has a bad record, it is very difficult to have him bonded, to perform, the performance bond. Is this the same idea of fees for people building houses or do they give everybody the same?

Mr. Webber: Again you could question the officials of the plan next week, but it is my impression that a similar principle is involved if someone has a bad track record.

Mr. Tatham: They pay more?

Mr. Webber: Not necessarily pay more, but they are allowed to do less.

Madam Chairperson: I think perhaps next week we might have that question brought up. Mr. Carrothers.

Mr. Carrothers: Thank you, Madam Chairman. I guess on the lines of Mr. Philip's question, the Worker's Compensation Board was appointed by the government which there seems to be a difference here. I wonder if this goes on to my question how do you exercise influence over these companies since it seems to be very independent. Are you considering appointing a board?

Mr. Webber: No, at the moment the various reviews of its operation are under way and the minister has a number of recommendations that relate to the construction board, but I don't know that a direct appointment of the board is under

consideration. That would be a rather drastic step in light of the history of the program at this point.

Mr. Carrothers: It would be quite a change. How do you influence this company? Is it by what we call moralsuasion?

Mr. Webber: In my remarks, I tried to indicate some of the types of activities between the senior officials of the ministry and the warranty plan officials. We meet regularly, we seem on most occasions to share a common outlook in terms of what needs to be done, and we have I think very effective communication.

We both of course have access to many of the same cases on file because many of the cases on the warranty plan get appealed to the minister or we get involved through an appeal to CRAT, that is the Commercial Registration Appeal Tribunal, and therefore we do have a common body of knowledge to work from.

Mr. Carrothers: So I guess you both view the world in a very similar fashion right now, but should it come to the point where the board disagrees with the ministry view, you don't really have a--apart from changing the Act itself, you do not have any way of mandating what that board is going to do.

Mr. Webber: Not in a direct way.

Mr. Carrothers: It is really very independent. Back to my analogy, it is like a private corporation except it's not an insurance company, although it seems to be operating like an automobile insurer acts.

Mr. Webber: Except to the extent that I indicated in my remarks, that there are three or four distinct ways in which the ministry and the plan do interact with each other. Of course bear in mind the Ombudsman has jurisdiction after a hearing through the Commercial Registration Appeal Tribunal.

Mr. Carrothers: So I guess to the direction of my question, Madam Chairman, we will be speaking to the Ombudsman again on these subjects because I am curious to know how they would feel dealing with a company that is so very far away from the government and that is a subject that we can pick up.

Is that more appropriate to pick up at a later time?

Madam Chairperson: Yes, because the Ombudsman did not have an opportunity yesterday to make its presentation with regard to this particular subject, and that may not be the case when the Childrens' Aid Society comes before us. We might have one or two questions.

Mr. Carrothers: It is certainly a question in my mind as to how the present structure may be changed. The ministry may change it, but under the present way this company is organized, I don't know how the jurisdiction of the

Ombudsman might logically extend so perhaps we could explore that at a later point.

Madam Chairperson: Thursday afternoon I think we will have ample opportunity to do that. Thank you. Mr. McLean?

Mr. McLean: Does the ministry have any plans to amend the legislation?

Mr. Webber: As I mentioned earlier, the ministry has a number of recommendations. They relate mostly to the structure of the board, and the regulatory authority which I have made reference. Beyond that, we don't at this point see the need for parliamentary consideration.

Mr. McLean: The area that I am concerned about is in Section 13(4), the warranty under subsection one applies only with respect to claims made there under within one year, after the warranty takes effect or such longer time under such conditions as are prescribed. And it goes on under Section 14(c), it says, "The owner suffers damage and does a major structural defect as defined in the regulations for the purposes of Section 13, and the claim is made within four years after the warranty expires or such longer time under such conditions as prescribed."

So do they have to complain within one year or four years once they find a defect?

Mr. Lewis: That is a two-part warranty. The first part that you read provides a one year warranty against all basic defects in workmanship and materials. In that case you must advise the warranty program in writing before the end of the first year of the defects with which you are concerned. There is an exception which relates to water penetration in the basement which is now a two year warranty for that type of problem.

The second aspect is that there is a warranty against a major structural defect in the home, and for that you have a full five years within which to make the program aware of the problem. So there is two separate warranties really.

Mr. McLean: What would happen if I bought five homes from a contractor? Do I get the home warranty when I purchase those five homes?

Mr. Lewis: Under the definition, a purchaser is someone who purchases a new home--I am paraphrasing--for occupation, and as such I doubt very much that you would qualify. You might for one of the homes, but it doesn't work for five.

Mr. McLean: So if I bought five homes, I would not get a new home warranty with each one of those new homes if I rented it for a year, turned around and sold it. Who would have the warranty on that home? Would I or the new purchaser?

Mr. Lewis: I think I will leave that to the warranty

program to deal with when they come. However, you are presenting a somewhat complicated situation. If you were simply to buy the five homes in bulk, and my understanding is when you went to sell those homes, you would in turn be the vendor and be required to register under the Act because you have interposed for yourself in that relationship, so you will have taken on the obligations to the new purchaser.

As such, you will have to be responsible for warranties. The Act essentially is aimed at home ownership and occupation, so if you are into a rental situation, there would not normally be a warranty on a commercial building that is available for rental. However, perhaps you might ask the question next week.

There are exceptions where there is a short-term rental perhaps because the market is such that a home cannot be sold or something like that. Perhaps the official can fill you in on that. But since the Act is aimed at the purchasers and occupiers--

Mr. McLean: The problem I have is I had a constituent who came to me with a complaint. She purchased a home from somebody who built it and rented it for a year. This person purchased this home and within a little over two years had some problems. She came to me and went to the ministry, and the information that I got was that the warranty had run out, that there was nothing that they could do. So here is an individual that purchased a home, it was a little over two years old, had a problem with water coming in the basement and could not have anything done.

Well, is your program any good or is it not? Is your legislation enforcing the New Home Warranties Program?

Mr. Lewis: I will have to leave that to the warranty people to speak to next week. However, it was because of the experience of the fact that most defects seem to show themselves within the first year that one year coverage is considered adequate. However, water in the basement seems to have proven to be one situation where one year wasn't necessarily enough.

As a result of that, the regulations were changed approximately a year and a half ago. So there is now a two-year coverage on that. Had that problem arisen today, I take it there would be no problem, but I am afraid I will have to defer to the warranty people.

Mr. McLean: That is why I asked the original question first. Does the ministry have any plans to change this legislation to take into consideration some of those issues that I have just discussed? Do they anticipate making the program a longer period of time for people to be able to pick up on defects when homes change hands like they do? Sometimes a person that buys it in two years time and then finds defects, they are out of luck. You will probably say I have to ask the others. I wish they had been here this morning because it appears that is where most of the answers are being referred.

Mr. Lewis: I am afraid I cannot respond directly to that.

Madam Chairperson: Mr. McLean, the Ontario New Home Warranty people will be here next Thursday afternoon. I hope that you are keeping all your very good questions that you have raised today for that date, and perhaps we will get Hansard so that we can refresh your memories over the week about business in progress.

Mr. Philip.

Mr. Philip: I had a couple of questions about other programs perhaps because I am trying to get a handle on why your ministry seems to treat this program as differently. Am I correct in saying that if I go out and I get in a \$500 accident on my car and the person does not have insurance and I go to the Motor Vehicles Accident Claims Fund, which is a tribunal under your ministry, and I do not like the decision, I can go to the Ombudsman and have an independent investigation?

Mr. Webber: A point of accuracy. I believe that agency is under the jurisdiction of the Ministry of Financial Institutions.

Mr. Philip: So your ministry is split into two, but basically when it was under your ministry at the same time in which this was set up, the fact that it is under another ministry now, it is the same ministry that set both of them up, and is it not true that I can have a \$350 claim against my car and I am happy with it and I go to the Ombudsman and here is a tribunal under your ministry then, if I am not happy with that decision then, I can get the Ombudsman to review it?

Mr. Webber: I cannot address the particular rationale point that you are requesting. The point of the fact is that decisions were taken some time ago that the New Home Warranty Plan is the mechanism by which the construction of new homes is warranted in the province. As I indicated in my remarks, there is one of only three jurisdictions in the world where such mandatory protection is given to home purchasers. How other problems are dealt with by the government is not the object.

Mr. Philip: But that is the problem though that this committee has to struggle with. Here you have a ministry that has set up a series of what my colleague here has called insurance programs, and I guess that is what they are, guarantees, and they are under the same ministry or at least they were originally under the same ministry until they were divided into two. So I go out and I get a fender bender that costs \$350. I am not happy with the decision of the tribunal that you have set up, and I can go and get that inspected by the Ombudsman. I go and have a major problem with the major investment that most of us make in our life, and I don't have that opportunity.

What about the Travel Insurance Tribunal? I pay \$600 for my wife and I to go to Acapulco and I arrive at the airport and the company has gone bankrupt and then there is a disagreement as to whether it is the agent or whether it is the company and so forth. Is it not fair to say that I have the right then under the Travel Insurance Tribunal, which is set up also by your ministry, to collect that \$600 that I have paid to go to Acapulco? I can go and get a decision or an investigation by the Ombudsman to get a refund if I am not happy with the refund I am getting from that tribunal. Is that correct, that the Ombudsman has jurisdiction to investigate that?

Mr. Webber: I am not clear on whether or not the Ombudsman has jurisdiction on that travel question.

Mr. Philip: May I ask Mr. Zacks? Is it true that if I get my \$350 fender bender that I am not happy with or I lose my \$600 on my Acapulco trip, both tribunals under the ministry or at least an allied ministry in one case, but originally the same ministry, I can go and have your people investigate?

Mr. Zacks: We have jurisdiction over both.

Mr. Philip: Over both. Well, it strikes me then, and I think that your ministry has to come to grips and give us an answer on this. Does it not seem blatantly absurd that for a \$350 fender bender I can have the Ombudsman inspect? If I am not happy with your tribunal's decision, a \$600 amount of money to go to Acapulco or have some fun trip I can inspect, but the major purchase of my life under a tribunal also set up by your ministry, I can't have an independent inspection by the Ombudsman? Does that not strike you as blatantly absurd that maybe we have our priorities mixed up in that ministry with regard to who I can have access to for an independent inspection?

Mr. Webber: Madam Chairman, our ministry is a dispute resolution ministry. We have struggled with all kinds of problems, and we have many mechanisms that are deemed at a particular point of time to be appropriate to approach a particular industry. The question of whether or not there is any absurdity or imbalance in those mechanisms is indeed something for the committee to comment on.

We welcome the wisdom of the committee in that regard.

Madam Chairperson: Mr. Philip, are you finished?

Mr. Philip: I had a few more technical questions, but I suspect I will have to ask them of the HUDAC Home Warranty people.

Madam Chairperson: That would be probably more appropriate.

Mr. Philip: They arise out of Mr. McLean's things, but there are whole apartment buildings being sold out now as condominiums, and there is a dispute as to whether or not

they are covered by the warranty or whether they are not, and I gather you people don't want to comment on that at the moment.

Mr. Webber: Yes.

Madam Chairperson: Mr. Philip, we have just added another hour for next week's log with a visit by Mr. Rose and we will allow you to ask those technical questions at that time.

Mr. Bell.

Mr. Bell: Mr. Webber, current ministry position using the phrase control over the corporation, so before we begin, governmental control over the corporation, make sure that you and I are both talking about the same thing. When I mean governmental control over the corporation, I mean an ability to legally and effectively require the corporation to do something or to approve that which it proposes to do. Is that understandable?

Mr. Webber: Not from that description.

Mr. Bell: All right, you tell me, when I say governmental control over the corporation, meaning this corporation, what does that mean to you?

Mr. Webber: A governmental control would indicate to me that the minister or the legislative council has the ability to overturn or demand a particular action.

Mr. Bell: And it may include requiring the corporation to obtain prior approval before an intended step is taken, correct?

Mr. Webber: Yes.

Mr. Bell: And is it fair to say that in the spectrum of governmental control, this corporation is towards the end of little control?

Mr. Webber: Yes.

Mr. Bell: All right. What is the current ministry and/or government's position on whether the degree of control should be pushed along the spectrum to greater control?

Mr. Webber: As I indicated in my remarks, I believe, or in answer to one of the other questions, the minister is considering recommendations that relate to the structure of the board and to the regulation-making ability of the board.

If action were taken in those two cases, I believe that the direction would be to exercise a bit more control. Obviously if the program cannot make a regulation for itself and has to have the government do that on its behalf or on its recommendation, then obviously in the spectrum of control sense, that is more control than before.

Mr. Bell: Are there any other areas where there is recommendation or a view held within the ministry that there should be greater control exercised over this corporation?

Mr. Webber: Not to my knowledge.

Mr. Bell: Was the corporation invited to make submissions to the ministry before this review was finalized?

Mr. Webber: Mr. Lewis' memory and mine both say no, but that could be correct.

Mr. Bell: Has the review and/or the recommendations been made available of the corporation for input?

Mr. Webber: Yes.

Mr. Bell: Has it been made available to any other source? Has anybody else been given an opportunity of knowing what the review is and the recommendations are for submissions?

Mr. Webber: I am at a loss because the legislative review project has published its--

Mr. Bell: I'm sorry that was a question from ignorance and not--

Mr. Webber: I'm sorry.

Mr. Bell: The answer is yes then?

Mr. Webber: Yes.

Mr. Bell: All right. Could you arrange to have a copy of that review provided to the -- forget it. I understand.

If we talk about the public interest that you have stated in your opening, that currently there is little compelling evidence or compelling evidence of a public interest to provide additional appeal procedures. What would be a requirement in your view of such compelling evidence before consideration be given of additional steps to oversee or review the process?

Mr. Webber: As a reflection, if we had a large number of unresolved complaints at the end of all of the various avenues of appeal or at the expense of getting a decision or a conciliation or an effective resolution that would come under warranty, then I would think that would be among the pieces of evidence required.

Mr. Bell: Does unresolved decisions or disputes include dissatisfied accounts?

Mr. Webber: If there is some justification to the dissatisfaction.

Mr. Bell: Fair comment.

Can we examine next the current appeal procedure up through the Commercial Registration Appeal Tribunal and your comments referable to an expanded scope of conciliation. Just a hypothetical appeal, if you will.

A home owner makes an application to the corporation for payment of a warranty item and that application is refused. That person then is able to appeal up through the process to the Commercial Registration Appeal Tribunal.

Mr. Webber: Yes, and as I indicated, there is a possibility of a second or third conciliation attempt.

Mr. Bell: I would like to get to conciliation in a moment. I would like to make sure we have a full idea of the process. The Commercial Registration Appeal Tribunal is a tribunal which is subject to the provisions of the Statutory Powers and Procedures Act, as I understand it, Mr. Lewis. Is that correct?

Mr. Lewis: Right.

Mr. Bell: That Act stipulates that in any proceeding, there has to be parties. An applicant or an appellant and a respondent, correct? There is no problem in the case of a home owner in our hypothetical as the appellant, correct?

Mr. Lewis: Correct.

Mr. Bell: Who is the respondent?

Mr. Lewis: The respondent is the registrar of the Warranty's Act.

Mr. Bell: Where is that provided?

Mr. Lewis: It flows from the Act itself, I believe. The Ontario New Home Warranties Plan Act.

Mr. Bell: Is the registrar as the respondent any different from the corporation as the respondent?

Mr. Lewis: No. The registrar acts for on behalf of the corporation.

Mr. Bell: All right. Is the registrant or the vendor, builder, as the case may be, a party to the proceedings?

Mr. Lewis: If it is a proceeding that relates to the building's registration, yes, it is.

Mr. Bell: This is a home buyer's claim.

Mr. Lewis: If we are at a point where it is perhaps claims made against the home warranties program on a matter, and the warranty program denies that claim, the builder is not a factor in that. It is strictly between the home purchaser and the warranty program once it reaches that

stage. There are more complex cases, other ramifications, but I think the simple answer is essentially the home owner and the the Warranty Program are the parties.

Mr. Bell: What is being appealed? I should have asked you about that earlier. What is being appealed is the decision of the corporation which disallows the claim for compensation regarding breach of warranty or failure to perform?

Mr. Lewis: That is correct.

Mr. Bell: So what we have is an appeal where one of the parties, the respondent to the appeal is the party that made the previous decision disallowing?

Mr. Lewis: That is correct.

Mr. Bell: Does the ministry have any concern as to that relationship?

Mr. Lewis: I see the format that is in use throughout all our registration statutes. We administer a good number of these, and whether it be the the Real Estate and Business Brokers Act, or the Motor Vehicle Dealer's Act, that is the format that has been adopted. But in those instances, it would be an example of a real estate sales representative or it would be the Registrar under the Real Estate and Business Brokers Act would be the respondent. So it is the same format. There are three other statutes which members of the public can come before the tribunal, and they are also cast in the role of appellant with the ministry respondent.

Mr. Bell: But does the ministry have any problem with respect to that relationship?

Mr. Lewis: No, not that I am aware of.

Mr. Bell: Now the conciliation process, which is Section 17 in the Act I believe, the way I read the Act, the conciliation process is discretionary to the corporation. Mr. Webber, are you saying that there has been a move recently by the corporation towards an expansion of the types of cases where conciliation is utilized?

Mr. Webber: I believe so, but again the officials of the plan next week could explain to you the philosophy behind the current management of that board.

Mr. Bell: Okay. Do you have a copy of the Act with you?

Mr. Zacks: I can loan them mine.

Mr. Bell: Could you look at Section 23, subsection 3, which is the very last subsection in the Act. Which reads: "This Act except Section 6 to 10 binds the Crown." Just get rid of section 6 to 10 for a moment. As I understand it, they are the sections that relate to the matter of registration and the ability to appeal or have reviewed any

decision respecting that matter.

Mr. Lewis: That's correct.

Mr. Bell: So everything else according to 23.3 binds the Crown. What does that mean?

Mr. Lewis: Well, my basic interpretation, I am afraid I have never put time or thought into this, but essentially it means that if the province were to build and sell a home perhaps under some housing program, you have to, except for the process of registration, you would have to offer the warranties to the purchaser of that new home. I am not sure if there is any actual application of that in the real world, but it would mean that the Crown would be in a position where it would have to offer the benefits of the plan which is provided from section 11 on to a new home purchaser.

That means the government would not have to register in the ordinary way with the corporation. For your benefit, perhaps to indicate that builders must register and homes must be enrolled and what this means is this: Even though a builder wishes to build a home in the province, he must register, and I will leave the details until next Thursday, but he must pass through the scrutiny of the registrar, be satisfactory in terms of past conduct to the financial builders. And then he is entitled, if he receives the registration, he can then become a builder.

Every new home that is constructed must be enrolled with the warranty program. Before you can enroll a home, you must be a builder registered under the program. You could be a builder and not enrolled because you are not active in that season, but each home has to be enrolled. So there are two separate factors. To answer your question in relation to subsection 3, it would mean that if the province, for example, were to wish to build and sell new homes, and the province would not have to register as the builder, but it would still be subject to those requirements for an enrollment to the home in the plan and offer the warranties that are required and provide a private plan.

Mr. Bell: Does it also mean that any action of the corporation binds the Crown?

Mr. Lewis: I am not sure that that would be a proper reading of the section, but I am afraid I have not spent any time on that in determining except to whom the Act applies, not what judicial responsibilities it gives to the corporation. That would give it extra responsibilities.

Mr. Bell: That is why I asked the question. Does it say this Act applies to the Crown? It says this Act binds the Crown. I wonder what the purpose of that is.

Mr. Lewis: Well, what I am saying again on statutory construction is that if an act is not specifically indicate that it binds the Crown, the Crown is not subject to that act. So this was an attempt to bring the Crown in for

certain aspects of the plan.

Mr. Bell: I have no further questions, Madam Chairman.

Madam Chairperson: Mr. Tatham.

Mr. Tatham: Just a minor point. When you build a house, you usually have to have someone to inspect it, a local building inspector. What part or what liabilities are on the local building inspector or the local municipality when they issue a building permit in this regard?

Mr. Lewis: Although I think the warranty people can give more detail than that, essentially the responsibilities of the building inspector are those who ensure that the Ontario Building Code are met and the local building requirements are complied with. Those activities are independent of the Warranty Program, and normally it would take place before the Warranty Program undertakes its responsibilities.

The Warranty Program, if I may generalize, takes responsibility when the home is sold to the purchaser looking after defects that are perhaps undetected or showed up later in the construction. The building inspector's role is in the actual construction process prior to the purchase.

Mr. Tatham: But basically the inspection is basic to the result? In other words, if you don't have an inspection, something to do or whatever, and you end up with maybe a poor home or a poor house?

Mr. Lewis: That would be a possibility.

Madam Chairperson: Mr. McLean.

Mr. McLean: Is the ministry opposed to the Ombudsman having further jurisdiction?

Mr. Webber: The ministry view at the moment is that it is not necessary in order to ensure the protection of the purchaser. It is more a matter for this committee to consider until a conclusion.

Mr. McLean: The reason I ask the question is I have concerns because I don't feel that the ministry really knows yet what's in their Act. It hasn't proven to us this morning that there is a great ability to answer questions with regards to the Act, and I am wondering if the ministry is fully aware. That is why I have asked my questions.

If you had planned on amending the legislation in any way, and if so, what way would you amend it? I have not got any answers clearly that there is any amendments in the works. So I just have some concerns on that line, and I felt that I would maybe express them due to the fact that the people that administer the Ontario Home Warranty Program seem to be more familiar with the Act than some of the ministry is. So it is just really a comment. Thank you.

Mr. Webber: Madam Chairman, if I might, I am sorry, Mr. McLean, if I left you with the wrong impression earlier. The ministry has recommendations in front of it. At the current time, a number of considerations relate to the structure of the board and relate to the regulation-making power as the two principle recommendations. No decision has been taken at this point as to whether or not those will be put forward to the Legislature for enactment.

Madam Chairperson: Thank you. I just have a question with regard to the presentation on page 12. Just at the beginning in context, you make the statement that given this volume and the minimal number of complaints made to the Ombudsman, there is little evidence of compelling public interest to provide additional appeal procedures. And you are referring to the amount of people who have enrolled in the program and the amount of conciliations made and so forth, and I just wondered what you meant by that statement.

Given this volume and the minimal number of complaints made to the Ombudsman, are you assuming that the number of complaints that have been made to the Ombudsman are representative of how many the Ombudsman would receive if they had expanded jurisdiction in this area?

Mr. Webber: We are drawing a general conclusion. Our understanding was that the number was very small, and I believe that an official from the Ombudsman's office this morning has indicated his belief that it would be very small.

Madam Chairperson: And you consider perhaps 50 or 100 very small per year?

Mr. Webber: No, 50 or 100 is a number that we are referring to the minister receiving. Of those, it is our history that perhaps only two or three or perhaps half a dozen would not come to a resolution. Therefore it is the smaller number that we are referring to. The number 2 was given to us at one point, I believe, in the Ombudsman's report if I recall.

Madam Chairperson: But would you agree with me that perhaps some of the reasons why the Ombudsman has not received a great number of complaints is because people have begun to realize that the Ombudsman does not have jurisdiction, so that perhaps the number of complaints that have been given so far are not representative of the amount that we may consider a possible amount if they had expanded jurisdiction?

Mr. Webber: That is a consideration of course, but my feeling would be that most home purchasers who are unhappy after all the efforts would not realize that the Ombudsman does not have jurisdiction and therefore would make a complaint.

Madam Chairperson: Would we agree that an appeal from the Commercial Registration Appeal Tribunal to the divisional court is a fairly expensive process?

Mr. Webber: Yes. You would characterize it that way, yes.

Madam Chairperson: And right now I understand that if the Ombudsman has jurisdiction of someone who has the opportunity to appeal to the divisional court does not do so within the time limitation, they do have the avenue of going to the Ombudsman as a review process?

Mr. Webber: Or as a process instead of going to divisional court.

Madam Chairperson: As long as the limitation period has expired. And I am just as interested in the same paragraph that we are discussing. It says that there does not appear to be any reasonable reason for an additional appeal procedures within this program which you have or structure which you have. One I might suggest to you would be cost, that would be a reason perhaps for another appeal procedure within the mechanism.

Mr. Webber: But we have drawn your attention to that particular point because the Ombudsman does have jurisdiction to anything which has been referred to CRAT, Commercial Registration Appeal Tribunal.

Madam Chairperson: If we were to give an appeal procedure to the Ombudsman prior to going to the Commercial Registration Appeal Tribunal as an alternative, is there a time limit on which--I see a written request for a hearing within 15 days. Is there a time limit at which you can appeal to the Commercial Registration Appeal Tribunal?

Mr. Webber: Yes, there is a period of 15 days.

Madam Chairperson: So if someone does not appeal within the 15 days, then all other avenues are cut off to them in terms of appealing any decision prior to that?

Mr. Lewis: As a general answer, yes. If there is some valid reason why the person could not deal within that time period, there are extensions, but mostly not.

Madam Chairperson: We dealt with this a bit earlier, but would you consider it an expensive process to go to the Commercial Registration Appeals Tribunal? I do not mean comparative to the divisional court, which we have agreed is a very expensive process, but do you have an idea of a ballpark figure of what it might cost if one obtained legal counsel and went to the Commercial Registration Appeals Tribunal?

Mr. Lewis: I cannot give you a figure if there is a lawyer involved, but often you don't need a lawyer and then there are no costs whatsoever. Again I will refer it to our friends who show up next week, but I suspect that most people who go to the Commercial Registration Appeals Tribunal do not take lawyers with them.

Madam Chairperson: The other question I had was just in page 10. You stated in the first paragraph on that page, that you are also of the view that the ministry has ample oversight with respect to the Warranty Program. Ample oversight is an expression that I have a little bit of trouble with, and you have explained it a bit in terms of, you know, that you have a representative on the board of directors.

I understand that there is about 10 or 12 on the board, so one of 12 people would be a representative of the ministry. So on the basis of that and the reporting on a yearly basis, you say that you have enough control or reason to believe that you have a good view of what's going on with the program. What does ample oversight mean?

Mr. Webber: The choice of words may not be exactly right, but the idea here is that we have a great deal of interaction with the warranty program officials because we have a common focus to resolve consumer problems as does the warranty plan. As I have indicated in many, many letters written to the minister, many phone calls come to the ministry, cross referrals take place. In addition, many of the officials of the Warranty Plan and ourselves meet on as much of a monthly basis to review the trends and the history and so forth of the recent experience. We have, therefore, what you would call a strong ongoing liason. Oversight in this sense does not mean control but rather some interaction and influence.

Madam Chairperson: Just as a closing remark before I go on to the next question, a question that I found fascinating, the amount of conciliations that have occurred. I think it was something like 34,000 to some odd 500,000 complaints, and I just would caution that removal of any type of this kind of program in my view would be hazardous given the number of complaints that you do receive. It is a good thing that a program of this type started at some point.

Mr. Campbell.

Mr. Campbell: Thank you, Madam Chair. You may have covered it, but I want to assure myself that you have covered it or at least considered it. That is the whole question.

I understand the Ombudsman of course was set up to protect the little person from buying that great mass of injustice and I mean that disparaging, I mean that correctly. One of the things that occurred to me when we are discussing lawyers and we are discussing a very expensive legal process, and the framework of my questioning would zero in on the process of this quasi-litigation, if you will, in that if both sides have to hire high-priced legal talent to defend their cases, then it would seem to me on the surface that you would simplify the system perhaps in trying to solve the problem at a lower level before getting to the tribunal.

So in that framework, I would like to ask first of all of the gentleman from your ministry that mentioned that a very few people actually used legal advice, but they go there themselves. And you may have covered it in earlier testimony, but I would like to ask, does your ministry have an idea of the proportion of people that would appear on their own and the number that would take counsel with them?

Mr. Lewis: I think we indicated before that it is a matter that we don't have an exact answer with us. It can be obtained, and I am sure the warranty people will provide that next week.

Mr. Campbell: The second question I have is that if you were going to a divisional court, that cost might be assigned as part of a judgement. I am wondering in this case if in fact there is any provision for that awarding of costs if in fact somebody does take a lawyer and if in fact the builder is found to make a judgement against him making certain corrections or fixing it because the person had to bring a lawyer.

In other words, would it cost like in a court situation? Would their cost be assigned to the individual bringing in a lawyer if, in fact, the builder was represented by legal counsel?

Mr. Lewis: Well, if you are asking a simple question. First, the tribunal does not have jurisdiction to award costs, but the second part is that a builder would not normally be present. Again the dispute, if you call it that, in the first Registration Appeal Tribunal is between the home purchaser and the Warranty Program director.

Mr. Campbell: So the counsel that was referred to earlier--

Mr. Lewis: Represents the Home Warranty Program.

Mr. Campbell: Represents the Home Warranty Program. Rather than the individual builder?

Mr. Lewis: That's correct.

Mr. Campbell: When you say awarding of costs, you mean legal costs. Is that what you are saying? Because the tribunal would make a finding in some way to have the builder rectify the problem, I would suspect, if I understand the process correctly?

Mr. Lewis: That's correct.

Mr. Philip: Would you agree that it is really academic as to whether or not the lawyer or the counsel is representing the builder or the warranty program because by the time that it gets to the hearing, they are both the same. The tribunal has come down and said we are not going to compensate in the case of this builder.

Mr. Webber: Surely you mean the plan, not the

tribunal?

Mr. Philip: The plan.

Mr. Webber: It could very well be at that point, but the case to be made having gone through one or two or three mediations may indeed be identical between the builder and the plan.

Mr. Campbell: Supplementary to that. In pursuing that if in fact the case, as Mr. Philip has suggested, goes to the tribunal, the tribunal then has the opportunity to make good the situation?

Mr. Webber: Yes, the tribunal has the opportunity to substitute its judgement for the judgement of the plan.

Mr. Campbell: Do you know how many times that would happen? Would you have that information in your ministry?

Mr. Webber: No, not readily at hand.

Mr. Campbell: But you can provide that?

Mr. Webber: Yes, we can.

Mr. Philip: May I ask another couple of supplementaries on that topic?

Would you agree that perhaps, and you have not been able to supply us with any figures other than I guess hearsay evidence that most claimants do not have legal counsel when they go before the tribunal. Would you agree that in many instances, the claimant only realizes that the formal nature of the tribunal and the need for counsel when they arrive there and at that point in time it is too late to obtain counsel?

Mr. Webber: I couldn't draw that judgement. I would point out to you that in respect of providing of statistics we have a difficulty because, of course, the tribunal hears cases under many, many acts, not just under the New Home Warranty Act. That is why we are suggesting to you that the New Home Warranty Plan officials would more likely have that information.

Mr. Philip: Do you know from the various complaints that you get in your office and the ministry's office whether or not the Warranty Program counsels people that they do not require counsel to appear before the tribunal?

Mr. Webber: We do not believe that to be the case.

Mr. Philip: Do they advise them that they have a right to counsel when they appear before the tribunal?

Mr. Webber: Again, in fairness, you would have to ask the Warranty Plan officials to explain their operations in that respect.

Mr. Philip: I guess I am faced with the same problem that Mr. McLean is faced with, and with respect to you, and I am not talking about you personally, but it seems to me that the testimony this morning indicates that the ministry has very little handle as to what's going on in a program that it initiated, albeit under a previous government, that it initiated and that yet in the long run has some responsibility for it.

I guess that gives me even more reason to believe that perhaps in the light of the fact that the ministry does not seem to have very much direction over what is going on in terms of policy, that maybe the homeowners should have the protection, the added protection of the Ombudsman because if the ministry is asleep at the switch, at least the Ombudsman I know is never asleep at the switch.

Madam Chairperson: Mr. Campbell.

Mr. Campbell: I think though that you are probably correct, but perhaps you can let the warranty people know about some of the lines of our questioning so that they can provide this information. I want to emphasize in very, very clear terms that that is in fact what happened subsequent to this meeting.

I just wanted to emphasize that so that we know or they know the line of questioning that one might expect. I am not sure that the ministry would have the kind of control that is being suggested, given that it is another ministry agency per se. Is that a correct assumption?

Madam Chairperson: Mr. Carrothers.

Mr. Carrothers: Thank you, Madam Chairman. I guess maybe the general feeling around the table here is that there are definitely problems with the plan, and there need to be some changes. I guess what we are talking about is whether the Ombudsman jurisdiction is to change. I wonder if I could get straight in my mind the claims process, since we have gone into it now and as to who pays. I mean, whether the plan is paying as opposed to arbitrating.

Am I right in understanding that the first round, it is the builder. The home owner has a period of time, a year or whatever it is to make a claim for workmanship or extended warranty. The builder is supposed to make the repair, and they ask the builder to make the repair. Then if the builder does not make the repair, the plan gets in and tries to decide if they should order the builder to make the repair. Is that what happens next?

Mr. Webber: In essence. The purchaser may adopt either a direct appeal to the warranty plan initially or to the builder initially to start the complaint mechanism, but essentially what you are saying is correct.

Mr. Carrothers: If you write the plan, don't you just refer it back to the builder and say, we give this letter, what do you say, kind of thing. And the builder gets

together with the owner in the first round? Most of them may solve the problem or not. And in the next round the planner comes in and says, Well, Mr. Builder, you should do this, you should make this repair. If the builder does not do it, it goes bankrupt. If the builder does not do it but it is still there, then what happens?

Mr. Webber: The program steps in at that point.

Mr. Carrothers: And does it itself?

Mr. Webber: There are a number of remedies and processes, and one of them is to have someone else do it and foot the bill, chase the builder who has not complied or not performed. Again your sense of the way the process works is correct. The details as to how many days or how many conciliation hearings or what exactly request procedure is and so forth is something again that the officials next week are better capable of answering.

Mr. Carrothers: Just to get a sense of it, when you are speaking about the conciliations, you are trying to get the plan, if you call it the plan, the corporation or whatever it is, trying to get the builder and the home buyer to somehow agree? That is what you call conciliation?

Mr. Webber: An onsite inspection takes place. All the things that the word conciliation would apply to you.

Mr. Carrothers: And then if the plan feels that the repair is a justified one, it may do it or pay for someone to do it, then it bills the builder I suppose for that cost?

Mr. Webber: Yes.

Mr. Carrothers: If the builder has gone bankrupt, the plan then pays for it?

Mr. Webber: The plan absorbs it.

Mr. Carrothers: In the one sense the builder is still there and in the other one he is not so you are the backup in the case when it is justified to repair and the builder has gone bankrupt, the plan pays for it. And then after the home owner does not agree with what the plan has to do, then they can go to this CRAT.

Mr. Webber: Yes.

Mr. Carrothers: Thank you.

Madam Chairperson: Mr. Tatham.

Mr. Tatham: To Mr. Webber. Do you think the way things are working now that you are reasonably happy with the situation and you don't need the Ombudsman to step in early?

Mr. Webber: We have a very definite concern anytime a home purchaser does not get satisfaction. It is a very major purchase, as everyone in the committee is aware. Our

experience certainly over the past couple of years, there has been a tremendous building boom in Ontario. The shortage of labour has been acute, and problems have arisen.

By and large, we think that the mechanism of the Warranty Plan, particular management actions and its operation, is an effective remedy for a consumer. It is a mandatory program, and it is one of only three in the world. Whether or not there could be improvements is something that the senior officials of the Warranty Plan and ourselves discuss weekly, monthly, and we have seen some significant changes in terms of the operation in the last couple of years. It is our expectation that those improvements will continue, and that the level of satisfactory response of the consumer problem will continue.

Mr. Tatham: That will include an Ombudsman?

Mr. Webber: The only point I was making earlier was that it would seem that a small number of cases which have been cited to us would become the purview of the Ombudsman. That is a question for the committee to consider, whether or not that was a compelling public reason.

Mr. Tatham: What about your own thought?

Mr. Webber: Our own feeling is that the Warranty Plan management and operations are moving in positive directions and it is an effective remedy at this point.

Mr. Tatham: Are there any jurisdictions in the world that you know of where an Ombudsman does take part in such an operation that looks after problems?

Mr. Webber: I don't know enough about the Ombudsman's legislation in other jurisdictions.

Madam Chairperson: Mr. Zacks, would you know offhand?

Mr. Zacks: New South Wales. I know there is an Ombudsman there. I do not know if an Ombudsman has jurisdiction there for their program.

Mr. Tatham: Do you think this would cost more than if we had an Ombudsman to increase the number of people perhaps that get involved?

Mr. Webber: It is very hard to know what the cost implication would be of an additional avenue of appeal. It might reduce the number of cases that came to the Commercial Registration Appeals Tribunal, it might not change that number, in which case there could be some additional costs for the Ombudsman and some lower costs for the Appeal Tribunal. It is very difficult to speculate on that.

Madam Chairperson: Mr. Henderson.

Mr. Henderson: Back to your answer to Mr. Tatham's question, in that situation where the plan says, there is a problem here, and encourages the builder to fix it up, and

if the builder fixed it up, that would satisfy the home owner but the builder says no. Can you say a word or two about what happens then with specific regard to what the power and authority of the plan is to have it done?

Mr. Webber: Mr. Lewis could give you the exact reading of the authority, but it is my impression that when such an order is given, that the builder does fix the problem.

Mr. Lewis: I think to be a little more specific, the Warranty Program does have the authority to remove the registration of a builder who does not comply with requirements. So it is very specific that they do have the power.

Mr. Henderson: So what we are talking about, whether the Ombudsman ought to have a role is it not in any sense limitations on the power of the plan. We are talking about where the home owner and the plan would disagree. The plan has all the authority and plan that it needs. If the builder is bankrupt, it has the money it needs to get something done.

My only question would be whether its judgement is occasionally influenced by its assessment of who is going to have to ultimately pay the bill. Thank you.

Madam Chairperson: Mr. Philip.

Mr. Philip: You have admitted, and I think you would have to admit that there are a lot of problems with the program, and I think that members of the Legislature who had experience with the program recognize that. I have had less complaints lately than in the past simply because there is no more land in my riding with which to put up new homes.

I have not seen any evidence either from you or from anyone else that the plan has improved dramatically from those days in which we had constant complaints against some builders, and in the case of Cadillac Fairview to their credit, they put up a tremendous number of homes in our riding, and we only had one complaint which was settled without your Warranty Program.

So obviously some builders seem to be better than others and some builders constantly have problems. I guess one of the things that I would ask you is that since you don't seem to really have a handle as to what is going on in that program, one of the advantages of the Ombudsman is that the Ombudsman does have the powers in any programs that it has jurisdictions over to recommend improvements that correct systemic problems.

You have admitted that there are problems in the program. Would it not be to your advantage as a ministry to at least have the Ombudsman be able to go in there as an independent observer, not on the side of the consumer, not on the side of the corporations, not on the side of the plan, and be able to say here in our objective investigation, we think that there are certain changes that

should be made. I cannot do that because I do not have the time or the technical expertise.

You have a vested interest in probably not admitting a whole bunch of errors because it makes the ministry not look all that great. The plan wants to defend itself because obviously then they do not want to admit that they have major problems. But somewhere out there you are getting a lot of complaints from consumers and MPP's like myself who are saying this thing is not working. Would it not be a good idea to have an independent person like the Ombudsman go in and see what is happening and make some recommendations for improvements?

Mr. Webber: Madam Chairman, as a ministry which is in the dispute resolution business on behalf of consumers day in and day out, we always welcome the assistance of the Ombudsman to sort out a particular case. The question here that we are expressing a preliminary opinion on seems to be that the number of cases that would be involved for the Ombudsman to assist with does not appear to be very large. Experience might indeed show otherwise.

We are very concerned any a time a consumer has a problem with a house purchase, a very major problem to that particular individual. We take all of the complaints that come to the minister or to the ministry officials very seriously. We discuss the problems that the Warranty Plan identifies or are identified to the Warranty Plan at great length with the officials of the plan.

It is our impression as perhaps it is yours, Mr. Philip, that in the past couple of years, we had a building boom that has threatened to swamp the entire industry, not just the Warranty Plan, and a number of complaints came out of that particular boom. It is our impression that management at the Warranty Program has taken very distinct actions lately that these problems of performance, if you want to indicate such exist, indeed are now more under control.

The difficulty of coping with this tremendous building boom should not be underestimated. Once again, I indicate to you, Mr. Lewis and I are not here in any sense to defend the program but to offer an observation on our perspective of how well it may or may not be working at a particular time, and our projection into the future. We would suggest to you respectfully that in terms of the details of the operation and in terms of the numbers of conciliations and the expected outcome being something that on a day-to-day basis as an independent organization they know about and we don't.

Madam Chairperson: Thank you. Is there any further questions from the committee? Seeing none, I would like to say thank you very much for coming before us today and providing us with the information that you have.

We will take a recess until 2 o'clock, at which time the Ministry of Community and Social Services will be present to discuss expanded jurisdiction in the Childrens'

Aid Society and until then, have a nice lunch.

The committee adjourned at 12:00 p.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
EXPANSION OF OMBUDSMAN'S JURISDICTION
TUESDAY, AUGUST 16, 1988
Afternoon Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Bossy, Maurice L. (Chatham-Kent L)
Bryden, Marion (Beaches-Woodbine NDP)
Carrothers, Douglas A. (Oakville South L)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
Mackenzie, Bob (Hamilton East NDP)
McLean, Allan K. (Simcoe East PC)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella
Tatham, Charlie (Oxford L) for Mr. MacDonald

Also taking part:

Philip, Ed (Etobicoke-Rexdale NDP)

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Ministry of Community and Social Services:

Scarth, Sandra, Director, Children's Services Branch
Rowney, Janet E., Manager, Community Services Division
Masters, Sheila, Manager, Community Services, Mississauga Area Office
Yack, Susan, Solicitor, Legal Services Branch
Walker, Andrea J., Director, Legal Services Branch

From the Office of the Ombudsman:

Meslin, Eleanor, Executive Director
Zacks, Michael, General Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, August 16, 1988

The committee met at 2:00 p.m. in committee room 151.

Madam Chairperson: This is a call to order of the meeting, and this is the Ombudsman committee and we are dealing with the issue of expanded jurisdiction over the next few weeks, and today we have the Minister of Community and Social Services before us.

On behalf of the Ombudsman, we have Elinor Meslin, Director of the Ombudsman, Mr. Michael Zacks, legal counsel, and for the Ministry of Community and Social Services, we have Sandra Scarth, the Director of Children's Service and Susan Yack.

Is there any questions from the committee before we begin?

Mr. McLean: I want to make a comment. I want to say about 14 years ago today you were coming across Lake Ontario, and I just thought it would be nice to have on the record that we can all remember you paddling your way home.

Congratulations.

Madam Chairperson: Thank you.

Mr. Philip: We have chipped in and we are financing, as members of the Legislature, your next trip across all five lakes.

Madam Chairperson: In a boat, Mr. Philip?

Mr. Philip: No, we will be in the boat and coaching you and cheering you along. Martinis in hand, no doubt. We will be behind you all the way.

Madam Chairperson: You had better ask other members about what you have in your boat. Fourteen years goes by quickly, to say the least. Any other comments from the committee? Anything important? Good.

Sandra Scarth, if you have a presentation, please begin.

Ms. Scarth: Yes, I would like to also mention that after I have given my presentation, I have brought along Andrea Walker director of our legal services branch who is sitting to my left; Sheila Parker, who is in the legal services branch responsible for child welfare who is next to her; and Sheila Masters, who is community services manager for one of our area offices, Mississauga area office, in case there are specific questions about operational process and so forth.

So they are here in order to answer anyone's questions more fully than I would be able to. Susan Yack on my left is in our legal services branch and has been responsible for administrative process or administrative reviews of administrative law. She will be able to answer those types of legal questions specifically related to the Act.

Madam Chairperson: Just keep in mind when we do question, and if you are going to direct a question, the person has to come up in front of the microphone.

Ms. Scarth: For the most part, Susan and I will respond, and I think Sheila Masters from the area office may have some responses to questions people may have.

Madam Chairperson: Thank you.

Ms. Scarth: I would like to take you through your package just very briefly. Basically I will only be presenting the first little part of the package, which is our formal response to the Ombudsman's proposal to Ombudsman's jurisdiction. Behind that we have appendices. Two appendices, one on a summary of our legislation which, explains very fully, and I will only highlight specific points of that section of the presentation so that you may take note of those areas.

There is an appendices 2, which is again the role of the area office, and Sheila will be able to expand on that. Then there is a third sheet which is a sheet, a facts sheet really, an information sheet on the office of the Child and Family Service Advocacy Office, and we have a couple of pamphlets, one for the advocacy office and one which is for our service providers to help them in providing to children in the residential care information about their rights. So that is our package.

I am simply going to take you through the first section, and in the event that I noted in the Ombudsman's paper who is particularly interested in services to native children, I also have some additional information in terms of our protections for native children which you may be interested in. I certainly can expand on that at the end of the presentation.

So if I can take you to page one, the objectives in producing a little paper. It is very small and concise. It is simply to outline our response to describe our current system for addressing complaints and to present our comments on expanding the Ombudsman's jurisdiction to Children's Aid Societies. Secondly, to look at the current protection complaint mechanisms.

The child and family services act, as you know, was an act that put together a number of pieces of legislation, and it was brought into being because of the recognition of the vulnerability of children. It was designed specifically to promote the best interests and ensure the protection, safety and wellbeing of children as the paramount objective, and it really is the first statute to my knowledge that actually

begins with a series of principles.

It also is intended to ensure that service providers have appropriate processes in place so that children and their families have opportunities to be heard and represented when decisions affecting their interests and rights are made, and thirdly, to ensure that appropriate mechanisms are in place for children and families to express concerns and complaints and to seek timely resolution of the issues.

So in other words, the intent of the ministry is to provide for best interests of children, to provide a timely and sensitive review of any complaints received, to provide due process in the review, and to resolve as much as possible locally and at the lowest level wherever possible. In other words, not to escalate upwards if we can possibly do them right at the local level.

So accordingly, the act established a number of procedural safeguards, mechanisms, some of which involve the court system through which children and families can seek redress. These really are the key checks and balances in our system that I wanted to draw to your attention. The key ones really are described in this little paper.

In part three, which is this section dealing with child protection issues, we have a Section 64 which makes it mandatory for Children's Aid Societies to have a written review procedure approved by our ministry to hear and address complaints from individuals seeking or receiving services. Now if the complaint cannot be resolved through the society's internal processes, the individual can have the issue reviewed by a director appointed by the minister.

In part five, which is the rights of children section of the Act, we have Sections 105 and 106, which make it again mandatory for a service provider who provides residential services to children or places children in residential settings to establish a written procedure for dealing with alleged violations of the legislated rights of children in care.

Again if the person who complains and is not satisfied with the results of the internal review process, he or she may request that the minister appoint an independent party to conduct a further review and report the findings within 30 days.

In part seven, which is our adoption section, we have Section 138 which provides for a director appointed by the minister to review the decision of the society with respect to an adoption placement or the removal of a child from such a placement and provides the authority to confirm or to rescind the society's decision.

In part two, which is our voluntary services, Section 34 to 36 provides for the establishment of the Residential Placement Advisory Committee to review the appropriateness of residential placements of children at specified intervals

set out in the legislation and make recommendations to the service provider, the child's parents or the Children's Aid Society, the child or his or her representative.

In part five, which is again the rights of children, Section 98 authorizes the establishment and operation of an office for Child and Family Service Advocacy to administer an advocacy system on behalf of children and families who receive or seek services under the CFSA. This is except any advocacy which is before the courts which is the responsibility of the official guardian.

Our ministry is responsible for advising, supervising and inspecting societies, which includes the handling of a specific case to ensure compliance with the legislation. These functions are carried out through our decentralized structure of regional area and district offices. This is to facilitate easy access to assistance and specialist expertise, and to provide an avenue for very quick handling of issues and complaints that cannot be resolved through the internal complaints procedures of a society. We do have the page in the appendix on the area office role in that procedure.

And if the society does not provide the services or perform the functions in accordance with the Act, the minister does have the ultimate authority to revoke or suspend the society's designation, remove the board of directors or operate and manage the society in place of the board of directors. That power has been taken once, when the Children's Aid Society of Kenora was taken over by the ministry for a period of time. You may recall that.

The next part of our presentation is basically our very brief comments on the Ombudsman's proposal, and we just thought there were some issues that you might wish to consider in looking at the Ombudsman's proposal. I guess our first comment is that there is a well established system of procedures and safeguards, checks and balances, if you will, currently in place. Some of which involve the court system. In fact, there is special protections for children in care simply because of the recognition of their vulnerability.

I think, secondly, the availability of a system of advocacy for children is important. It is for this reason that the office of the Child and Family Advocacy was established. As I mentioned before, advocacy through the courts is provided through the office of the official guardian.

Thirdly, there is a requirement for detailed knowledge and specialist expertise regarding children's problems and the settings in which problems occur in order to respond quickly and appropriately to finding solutions to issues within the environment of their occurrence. I was pleased to see in the Ombudsman's report that they recognized the sensitivity of this area.

From our perspective, this capacity already exists through our decentralized field structure together with the

support provided at the corporate level. The system that is in place, as I mentioned earlier, encourages resolution of issues at the local level. In fact, to our knowledge at this point, only six section 64 complaints have actually resulted in reviews by a director appointed by the minister since the proclamation of the Child and Family Services Act in 1984 and duplication of the process and structures could be costly.

The fourth point is that often complaints and some of those in the paper, the Ombudsman's paper, relate to dissatisfaction with court decisions. For example, a complaint by a parent that his or her child was wrongly taken into care or the parent who was not awarded custody of his or her child frequently expresses dissatisfaction with the care provided by the custodial parent. Issues such as these can only be dealt with by the court, and there are some limitations on the actions that can be taken following a court decision.

Now I would like to just take you through the appendices. I am not going to go through it item by item, but just to note to you some areas that I think you should take note of.

The first one really is that whenever we speak about the board or when the board is commented upon in these appendices, we are speaking about the Child and Family Services Review Board, and it is a board that consists of 11 members appointed by the Lieutenant Governor. Three members are a quorum and they conduct a number of reviews under the Child and Family Services Act and the Day Nurseries Act.

When we refer to a director, we do refer to a person appointed by the minister as a director pursuant to Subsection 5.1 of the Act. The minister may appoint any person to be a director to perform any or all of the duties and functions and often does appoint a non-ministry director to do some of the reviews where there are complaints.

In terms of the Children's Aid Societies, we have simply laid out here for your use the main functions of a Children's Aid Society, the bottom of the page. Over on page two, I wanted to again draw to your attention that the ministry is responsible for advising, supervising and inspecting societies, and that is under Section 17 of the Act. Also, under Section 17, a director can inspect the society's handling of a particular case. Recently, where a society's handling of a particular case was under review, a person not employed by the ministry was appointed as a director to conduct the review to ensure objectivity.

I just draw your attention to Subsection 22. That is the minister's revocation powers I mentioned earlier. Just again to expand a little on the Residential Placement Advisory Committees, towards the bottom of the page, I just wanted you to be aware that the RPAC makes recommendations to the service provider, parents or the society or the child if it is reasonable to expect him to understand and to a representative chosen by the child's band in the community

who are at those hearings if they wish.

If the child is not happy with the recommendation or the recommendation is not being followed, he may appeal that decision to the Child and Family Service Review Board. The board may order that the child be transferred because the board has stronger powers, to another placement or that the child be discharged or confirm the existing placement.

On page three, there is an elaboration of the child protection proceedings for your information. At the bottom I wanted to point out to you in the status review section that the society, a child who is 12 years of age or older, a parent or the person with whom the child was placed under supervision order or where the child is an Indian or native person, a representative chosen by the child's band or native community may apply for review of the child's status, and that is section 60 under the Act.

Over on page 4, in terms of Crown ward reviews, the status of a Crown ward must be reviewed at least once a year by a director or a person authorized by a director. After the review, the director may direct the society to make an application for a status review, so that any of these cases where there are problems, the Crown board reviewer may ask the society or direct the society to order a status review and the case can be heard before a court. That is Section 62.

I wanted to elaborate, and I will do that at the end of this presentation, on the native Crown ward reviews that we have done for your information, and I will do that separately.

In terms of investigation by a judge, the minister may also appoint a judge to investigate a matter relating to a child in a society's care or the proper administration of the child protection part which is part 3 of the Act. The judge shall conduct an investigation and make a written report to the minister. That is Section 63.

I have already mentioned the Section 64 reviews which relate to the complaints procedure, internal complaints procedure of the society. So I will not elaborate there, but there is a little bit more elaboration for your information. We also have a child abuse register and expunction hearings to take person's names that have been put on the register and are also controlled under the Act.

Where a society actually verifies that a child has suffered abuse, it must report the information to a director who maintains a register of that information. That is called the Child Abuse Register. A person is given notice when his name is placed on the register, and he may request that his name be removed. On receiving the request, the director may grant the request, but the director may also arrange that a hearing be held, an expunction hearing.

Again I wanted you to understand that those particular hearings are held under The Statutory Powers Procedures Act

and the director's decision may be appealed to the divisional court, so it does have an avenue to divisional court.

Again, the office of the Child and Family Service Advocacy, we have an attachment which I would ask you to note for your information giving a little more information about the operation of that particular office, and we also have the pamphlet which is part of your package.

We also have section 105 and 106 reviews which I mentioned briefly, and here again I would just simply like to point out a number of people who can ask for those reviews. The child, the child's parent, another person representing the child if a child is not deemed to be able to do that on his own behalf.

Within 30 days, the minister may then appoint a person not employed by the service provider to conduct the review, and within 30 days of his appointment, the person must complete the review and set out his findings. Where the minister then decides to take any action, after receiving a report, he must advise the person who made the complaint and the service provider of his decision.

Just for your information at the bottom of the page, there is an unproclaimed section of the Act that also provides an opportunity for hearing before the Child and Family Service Review Board. That is where a child protection worker may ask for a secure treatment program for the emergency admission of a child. The Act provides the opportunity of a hearing before the board which has the authority to order the release of the child unless the board is satisfied that the child meets the criteria for emergency admission. Now that has not yet been proclaimed, but hopefully will be imminently.

I also have in here a bit about the adoption because there is a possibility adoption orders are irrevocable. There are a few appeal mechanisms in the Act and that is section 150 and 151. There is also a review under section 19 where an adoption has gone on for over a year and no order has been put forward. There is an avenue for review. Section 138 reviews, as I mentioned earlier, and this is a further elaboration of those reviews for your information. Just noting the practice that has been developed to ensure objectivity is that it is usually a nonministry member or at least another area manager other than the area in which the complaint occurred who would do those particular reviews.

I also would like you to note that the reviews are conducted in as timely a fashion as possible to ensure that the person receive a decision as quickly as possible because they usually involve the movement or possible movement of children.

At the bottom of the page, there is a little bit of information again on adoption disclosure because the disclosure of identifying information may be refused by the adoption registrar, if she has the belief that the

disclosure might result in serious physical or emotional harm to any person. However, if that information is refused, the person may request the Child and Family Services Review Board to review the matter.

Once the board has reviewed the matter, there is an error here, I would like you to note the second line from the bottom where it says the registrar may make an order or the registrar may confirm the refusal. It is actually the board. It is not the registrar, it is the board who has that power.

Over on page 7, we also have another unproclaimed section which should be proclaimed shortly, and that is in part 8 which deals with records access and disclosure of records. Under part 8, the board will conduct reviews regarding access and disclosure of records. Someone who has been denied access to or wants a correction of a record as well as someone who believes a service provider wrongly disclosed his record will have recourse to the board.

The last thing on this page has to do with licensing in part 9. I want to draw your direction there that where a director proposes to refuse to issue a license or to refuse to renew or to revoke a license, the applicant or licensee is entitled to a hearing by the board in Section 180. On hearing the matter, the board may order the director to carry out the proposal or to take such other action as the board considers appropriate and the board may substitute its opinion for that of the director. The board's decision may be appealed to the divisional court so there is an access again to the court system.

I would also draw your attention to appendix 2, which is the area office role in responding to complaints. I will not take you through that because my preference would be to have Sheila Masters speak to that when I am finished, if that is all right. The last thing I would like to draw to your attention is the special Indian Crown and board review which the ministry conducted in order to ensure that there were no Indian children at risk in the province.

The background of this is that the purpose of this review is to provide for those children who became Crown wards prior to the Child and Family Services Act. Once the Child and Family Services Act came into being, an Indian representative has a right to appear at Crown wardship hearings so that any child since the inception of the Act, the Indian bands do have access to any child who comes before the court on a protection matter. There were some children in the system prior to that, and there was not a grandfather clause, so that a special Indian Crown ward review was undertaken. It also is designed to provide a link between the childrens' aid societies and the bands on behalf of their children to start developing a better linkage.

The files of 236 children were reviewed in 28 childrens' aid societies, and these children were affiliated with 57 bands. The reviews were undertaken by 22 native reviewers working with five ministry staff so that there was

no native child reviewed without a native reviewer present. In terms of the age of the children, I think it is interesting that at the time of the review, 60 per cent of the children were adolescents at an average age of 13 years and two months. The average age at which Crown wardship was eight so that there were very few young children, Indian children, coming into long-term care.

In terms of access and visits by family, over 60 per cent had either court ordered or voluntary access to mother and 49 per cent had legal or voluntary access to father. These figures are really quite impressive, particularly because the review found that a large number of the birth parents were deceased. Legal and voluntary access to extended family, that is cousins, grandparents, uncles and aunts is also quite high. Approximately 57 per cent had access to extended family.

Most societies were active in arranging visits with the child's parents or extended families. In terms of special needs, many of the children reviewed have special needs due to developmental delay, affects of fetal alcohol syndrome, learning disabilities, hyperactivity, et cetera. 46 per cent of the children were in need of special education.

The recommendations from the review in most of the cases review the present plan for the child was considered to be in the child's best interests. This was by agreement of the native reviewers. In 51 cases, recommendations were made regarding the reassessment of needs, placement or permanency planning, and this should ensure more appropriate service in the future. 354 individual recommendations were made which is 1.5 per case. These mostly dealt with cultural issues such as the ongoing exposure of the child to native support systems, and role models as well as contact with bands. Search for extended family and other care givers. A court status review, in other words, where it was felt that the placement really was not meeting the needs of the child, was recommended only for three cases, and as it happened in those three cases, the children were already residing in the parental home.

For another two cases, the review team recommended that consideration be given to returning the children to their parents. In terms of band involvement, the child's band was contacted for all of the Crown ward's reviewed, and in terms of the follow-up going on at this time, the program supervisors in the area office are responsible to ensure that all the recommendations made by the Crown ward in the Crown ward review are being carried out.

I think the other interesting thing that came out of that review was that approximately 20 to 25 per cent of the children were in native placements, and this is much higher than a few years ago. I think we also have found that there are many, many higher numbers of Indian children being placed in Indian families. Placement in white homes has been greatly reduced, and the societies have really gone into looking towards the native placement for native children.

I think I would like to stop my formal presentation at this point. I think I would like Sheila Masters to present to you the role of the area office before we stop for questions.

Madam Chairperson: Would you identify your role in the ministry and also just clarify for me who else will make a presentation as well. I thought you were going to direct to appendix 2 or something like that. Ms. Masters.

Ms. Masters: I am Sheila Masters and my position is Community Services Manager in the Mississauga area office for the Ministry of Community and Social Services. Perhaps I could take a moment to explain what an area office is, if that would be helpful. I refer to the ministry's decentralized structure.

The Ministry of Community and Social Services is organized in a way that has the province divided into four regions, and within those four regions, there are a total of 13 areas. Each area is responsible for all of the services that are funded, licensed or operated by the ministry within that geographic area. So the Mississauga area, which is called that because the office is located in the City of Mississauga and is responsible for one geographic area in the province. There are 12 others throughout the province.

In terms of my particular position there, I have the authority, delegated authority and appointment as director under the Child and Family Services Act, and Sandra referred to that particular designation in her presentation. I supervise and manage the program supervisors who relate to childrens' aid societies as well as other programs that we supervise.

Is that sufficient in terms of background?

Madam Chairperson: Oh, yes.

Ms. Masters: What I will do is just go briefly through appendix 2 at the back of your package, and I am certainly open to requests and further elaboration on any of the points. The position of program supervisor has been referred to, and it is noted in here that that is a position that has specific powers under the Act. Those powers include the right to enter premises where an approved service is provided, inspect the facilities, the service provided, books of account and the records relating to the service. So the program supervisor have the right to do that.

We have referred to the director's powers. Program supervisor is most likely to be the person who receives complaints or concerns from someone who either has questions about or is not happy with something that a childrens' aid society has or has not done. The first thing a program supervisor will do is ensure that the person calling is aware that there is a complaints procedure that each childrens' aid society must have and does have a complaints procedure and encourages the caller to access that

complaints procedure or to take the next step in that complaints procedure if they have not done that.

Notwithstanding that, if the concerns that are being expressed indicate serious allegations about the conduct of the society, then the program supervisor may contact the society and indicate that there has been concern expressed, ask for documentations, may review the files of the society, may interview staff and may become involved in providing advice or consultation to the society around the management of that situation, even while the complainant is actually going through the complaints procedure to help ensure that if there are some concerns about how it is being handled, that those are being dealt with at the front end. When the complaint relates to a matter that is before the courts, if the subject of the complaint or concern is before the courts, the program supervisor would not get directly involved in that at that time.

Should a complainant exhaust the society's internal complaints procedure, go through all the steps right up to the board of directors of the society, the complainant then can request a director's review under the Act. It is ministry practice generally to request that a director other than a director in the local area office conduct that review in order to ensure objectivity. In addition to complaints or concerns being received from outside, childrens' aid societies are expected to notify their area office.

If there are any serious occurrences or matters that they are aware of that are likely to become contentious and again the program supervisor may well get involved in requesting further information, reviewing files and providing advice.

There is ongoing consultation supervision and discussion throughout these complaint investigations, and as Sandra referred to in her presentation, in very serious circumstances, where investigations reveal that a society is not able to carry out its prescribed function, or has seriously mismanaged an individual's situation, the minister may take action under section 22 or 63, the appointment of a judge or the takeover powers. I am open to questions.

Ms. Scarth: That actually concludes our formal presentation unless people have other questions. I do have a little more information about other programs or protections for native children if people are interested in hearing those. Otherwise we would be ready to answer some questions.

Madam Chairperson: Thank you very much. I think we will go into questions and that might generate some, and at the end I certainly would be willing to provide you with some information to fill any gaps you feel the committee may have missed in their questioning but I think you will agree that the questioning will become quite thorough and perhaps we will touch on it. I have Mr. Philip first on my list.

Mr. Philip: I only wish my colleague Richard Johnson was here because he is so much more knowledgeable about this

particular aspect of government than I am, but I will do my humble best, as he would say, and forgive me if I take you through sections of the Act that I do not understand and that you may want to help me, as a layman, who quite frankly approaches the Act only once in a while and usually I run to Richard Johnson or somebody else and say help, I have a problem with a constituent.

So let me take you to page 1 of your report and the section 64 reference. The individual can have the issue reviewed by a director appointed by the minister. Can you tell me how often is this done or have you provided us with that information?

Ms. Scarth: I believe it is back in here.

Mr. Philip: I think you mentioned a figure somewhere.

Ms. Scarth: That is just our knowledge at this point in time. The only one that has come to the ministry since proclamation of the Act, there are six that have worked their way up through the system. Now there may be more section 64 reviews than that, but those are the ones that I am aware of, six.

Mr. Philip: And were those resolved, were any of those resolved in favour of the complainant?

Ms. Yack: I believe so. Recommendations were made to the society that they change what they had been doing.

Mr. Philip: Were those changes done?

Ms. Yack: Ministry program supervisors are following up to see that the changes are done.

Mr. Philip: Is there a specific recording mechanism to ensure that recommendations are in fact followed up?

Ms. Scarth: I don't think there would be a specific recording. There is a requirement especially to have it recorded, but the program supervisor would be following through so the area office would have information on that, and there is a written report.

Mr. Philip: I guess in public accounts, we have asked the question and indeed changed procedures. It does not make very much sense if you make recommendations unless you have a follow-up procedure to ensure that they follow it, and that has been the experience of the oversight committees in the United States which is why the public accounts system seems to be changing in this province I think for the better.

Madam Chairperson: Could I interject you for a minute. Before you finish with section 64, Mr. Campbell had a question.

Mr. Campbell: Supplementary.

Mr. Philip: Sure. I need all the help I can get going through this.

Mr. Campbell: Under the section 64 situation, where it occurred, those six cases would have gone through a fairly lengthy process to get to where they would be at this point in time, and such recommendations and a period of time for those six to be implemented. Do you have an idea of the time line of that process?

Ms. Yack: Time at which the recommendations should be made?

Mr. Campbell: Right.

Ms. Scarth: We probably could obtain that information for you. I don't have it here with me, but I am sure it is available. I would be able to get some information on that.

Mr. Campbell: Could you restate the numbers that went with the system that came out, the six resulted to this level?

Ms. Scarth: I am sorry?

Mr. Campbell: To this point, how many have you -- sort of going through the process starting at we will call it stage one for simplicity, the initial complaint to this point?

Ms. Scarth: I would have no way of knowing how many complaints originated in a childrens' aid society. I understand they have a presentation too. They may have some idea. If they get resolved at that level, there will be no reason for them to come to the ministry so I will not know how many were resolved before they came to the program supervisor at the ministry.

Mr. Campbell: If I might make a further supplementary and that will be the last one. The point I am trying to make is that there is a process that you get to which is somewhat similar to what we heard this morning in that there is some internal review system that can make those implemetations, implementing the recommendations.

Now I ask the Ombudsman, would you get involved, as we heard this morning, in a similar way if the subject were not satisfied? Would it allow you to go into the system at that point?

Mr. Zacks: At the point of the Childrens' Aid Society?

Mr. Campbell: No, at the top end. If those six cases were not resolved?

Mr. Zacks: We could do that now. If one of those six people complained to us, we would have jurisdiction over the director's decision or recommendation back, as I understand the process, back to the Children's Aid Society. How those recommendations are acted upon would have no jurisdiction in

terms of the Childrens' Aid Society's implementation or rejection of those recommendations, but we would be able to investigate any actions that the ministry may or may not have taken to ensure those recommendations can be implemented short of taking over a society, and the problems the ministry would have to enforce that, but ultimately the minister does have a final control by taking over the Childrens' Aid Society.

Mr. Campbell: It is amazing how in this business one question leads to another, Madam Chairman, and I beg your indulgence, --

Mr. Tatham: We should be in line here with supplementaries to a previous question from the previous speaker and not take up the floor and add other questions to it because if we are going to do that, then I will do it and everybody else will do it. So I would suggest you take speaker to speaker unless it is a specific supplementary.

Mr. Campbell: I was trying to follow the line of questioning, but I will hold off for my turn.

Madam Chairperson: Thank you, Mr. Campbell. Mr. Philip.

Mr. Philip: On the directives or recommendations that you have given to these in the cases of these six instances where it has made its way all the way up the line, have you set deadlines or times by which those recommendations are to be implemented?

Ms. Yack: Not that I know of.

Mr. Philip: I guess what troubles me is that I do not see any process whereby there is any assurance that after something has come all the way up there and you have investigated and obviously must be of a serious nature if there are only six that have made it, that either your recommendations are being followed up on, that there is a specific timeframe in which those recommendations must be implemented or at least an explanation given as to why they are not implemented, and it seems to me that that gives me a certain uneasy feeling that all of this work has gone into something that may not result in any change whatsoever.

Can you tell me why I should not have that uneasy feeling?

Ms. Scarth: I would think, Mr. Philip, that your points are very well taken, and there may very well be deadlines. I am not aware of them. Again I can do some follow-up for the committee and provide you with what information is available in terms of timeframes and follow-up. I will do that.

Mr. Philip: When I read through the first part of your brief, you say that it provides for different mechanisms and for review, and yet when I go to the Act, the operative word is different than the words that you are using and that you

seem to imply because the key word over and over again seems to be 'may' rather than 'shall'. I guess what I would like to ask you to do is to take me through each of these parts that you say provides for a system of review and tell me where you are actually getting that kind of review because the words in there are 'may', and I am wondering if some of the childrens' aids societies are in fact saying the word is 'may' and therefore we don't have to do this, and some rather than 'shall' and therefore are doing it.

So I realize that is a long process, but every one of those sections uses the words 'may', and 'may' always suggests to me that that means I may or may not. I am concerned about the may not rather than the may. Can you walk us through those?

Ms. Yack: Section 64, the society shall establish a written review procedure and have it available for dealing with complaints. It has to include an opportunity to be heard by the society's board of directors.

Madam Chairperson: Could I interrupt, Mr. Philip. Could you enlighten me as to what that has to do with the jurisdictional question of an Ombudsman?

Mr. Philip: Yes, the presentation being made is that there are, in fact, review mechanisms in it, and indeed as part of page 1 and parts 2, they in fact cite the sections, and what I am pointing out is when I get to part 2, say, of section 34, 36, the presentation says it provides for the establishment of a residential placement advisory committee. I look at the Act and it says 'it may'. It does not say 'shall', and section 98 the same thing. The operative word is 'may'. Not 'shall'.

Since I have not interviewed every childrens' aid society in Ontario, I am not sure whether these people are taking the word 'may' and interpreting that as any one of us could as 'may' or 'may not' and therefore whether or not there are as strong a review system as is being indicated by our guest today.

Madam Chairperson: Thank you. Miss Scarth, could you now understanding the question address your mind to that.

Ms. Yack: If I could take you through some of the sections, subsection 34 (6), an advisory committee 'shall' review, and then rests the residential placement which an advisory committee 'must' review. That includes where a placement lasts or is intended to last 90 days or more, and this applies to institutions which are placements which can accommodate ten or more children. They also must review the placement of a child who is 12 or older and who objects to the placement.

Also must review a placement that the minister refers to the advisory committee.

Mr. Philip: May I back up then. 34 (2) says the minister 'may' establish the residential placement advisory

committee. It does not say 'shall'.

Ms. Scarth: The minister has.

Mr. Philip: So the minister has in that case.

Ms. Scarth: Yes.

Mr. Philip: Okay. And section 98?

Ms. Yack: The minister has established.

Mr. Philip: So it is permissive, but he in fact has. And is it not correct that any subsequent minister might, in fact, be perfectly in keeping with the Act and abolish such a thing or alter it since it is not a requirement under the Act?

Ms. Scarth: I think that is possible but it is highly unlikely.

Mr. Philip: I have a whole series of questions on the procedure, but since I have taken up 10 or 15 minutes, I will yield to other members if you put me back on the list.

Madam Chairperson: I certainly will. Mr. Tatham.

Mr. Tatham: Do you use an Ombudsman for any case at all?

Ms. Scarth: The Ombudsman has access to any of our directly operated government services. So in other words if we have a young offender in a directly operated government facility, the Ombudsman certainly is able to investigate. And any other directly operated services. We also directly operate private and international adoption services and the Ombudsman may get involved in those cases as well. Anywhere we directly operate a facility, the Ombudsman is able to investigate it.

Mr. Tatham: You get along with them all right? You have no problems with an Ombudsman?

Ms. Scarth: I have had no specific personal dealings with an Ombudsman. Actually that is not true. I have. They did get involved in one investigation.

Mr. Tatham: You had no problems at all?

Ms. Scarth: It has been some time since the Ombudsman came in and looked at our files, and I have not heard what's happened.

Mr. Tatham: Could you see any problem saying yes, bring the Ombudsman in?

Ms. Scarth: I guess my response to that is I would rather you direct that to our minister. You know, as far as the statements that I would make here into this committee is that our concern possibly would be duplication, costly

duplication of a service that we have already. Our system is certainly not perfect. No system is, and it can always be improved. In fact some of the suggestions that Mr. Philip made could easily be resolved by putting increased procedures in place by policy and by regulation.

It would be very ease to do. It would take a directive to our area offices to ensure that that happened to put some things into place that he is suggesting. In fact they may be in place. I am not sure. I could find out. So I think there are things that can be done by policy that would be easier. So I really cannot answer anymore than that. I have not had enough dealings with the Ombudsman.

Mr. Tatham: There is one comment that you made about bringing a director in from another area to look after an appeal. Would that director not have a conflict about being a director? Would it not be better having someone other than a director to look at a situation?

Ms. Scarth: We are able to do that and do.

Mr. Tatham: Do you have a select group of these people? Are they a particular group of people that are known to society or just to your society? How do you arrange it with that group?

Ms. Scarth: In one instance that I know of, it was fairly recent, a person was directed by the minister to do a review in a society, and this person was now in early retirement, but is a well known person in the social services field with good credentials and good credibility, had nothing do with that particular society and went in and did what I felt was a very objective review, but had the experience with children, the experience of the system, used the system and had no vested interest in the review. So that is one of the processes that we do.

Mr. Tatham: It would be rather difficult then to bring somebody in who probably would be known to the people involved?

Ms. Scarth: I am not sure that that particular person was that well known to the other society.

Mr. Tatham: Sometimes it is very difficult. You go into a situation. I know an individual across the way and did a check on the old boy's system where I know him and he knows me and we make a deal. We want to get away from that if possible.

Ms. Scarth: It is fine for one to go in. Not in a section 64 review, but in a section 138 review that I was involved in some time ago, I felt it was important to have objectivity in that particular review because it was a seemingly contentious review. It was a Solomon's type of situation, and what we did was hire an ex-professor of social work who was also a lawyer who had no connections with the childrens' aid societies in the past, no connections with the ministry in the past but was really

seen to be very knowledgeable in the area of marital relationships and child development which are the two key areas we wanted to examine, so we hired her to do that particular review work.

Mr. Tatham: So it would be a duplication of effort if the Ombudsman took over, is that it?

Ms. Scarth: I think it could be a duplication.

Madam Chairperson: Thank you, Mr. Tatham. Mr. McLean.

Mr. McLean: An individual whose name may appear on the abuse registry, that person may feel that they should not be on that registry and yet your agency will maintain that it should be. Who would that individual appeal to who feels that he is innocent or she is innocent or whoever it may be for a non-partisan tribunal to have their name taken off of that registry?

Ms. Yack: The person may make a request to a director, and the director or a person authorized by the director may hold a hearing unless the director decides to remove him on the request of a person who asked.

Mr. McLean: But this person is fighting the bureaucracy from within. How is he going to get an independent hearing on that matter?

Ms. Yack: The hearings have been conducted by persons not employed by a childrens' aid society or by the ministry, but by persons authorized to conduct them.

Mr. McLean: Who would they be?

Ms. Scarth: A number of these people are lawyers and they are hired by the register, and they are under the Statutory Powers and Procedures Act so they operate under a statute and they are arms length and independent of the minister. They make the decision. The director does not.

Mr. McLean: So if an individual's name is on the registry and he appeals to the director to have his name taken off, the director can say no, I do not want it, I do not agree with you, it should be on? Who does that person appeal to then? You said the director is the one that sets it up.

Ms. Scarth: The director would take it off if he thinks it has been put on in error after investigating it or he holds a hearing and he holds an expunction hearing and the person has the choice of having an expunction hearing and he can take his counsel to the hearing.

Mr. McLean: If he is not satisfied with that, then who does he turn to?

Ms. Yack: He can appeal to the divisional court.

Mr. McLean: Okay. Would it go through that procedure

then before the Ombudsman could then look at it or would the Ombudsman be able to step in before that, if they had jurisdiction over it? I am worried about the individual that feels that he has a right or she has a right and does not know where to turn to. I wonder if the Ombudsman had jurisdiction, would they be able to step in in that procedure?

Mr. Zacks: We do have jurisdiction.

Mr. Philip: After the court or before the court?

Mr. Zacks: Before the court, and in rare circumstances perhaps after the court but generally not.

Mr. Philip: So you step in just before the court, not any sooner under the present jurisdiction?

Mr. Zacks: There is a time period for appealing to court. There probably is, and if the time period expired before the complaint came to us or the complainant chose not to go to court, we would be able to investigate the complaint.

Mr. McLean: As it is now?

Mr. Zacks: As it is now, that's right.

Mr. McLean: I will go on to my next question. In the case of a broken home, do child protection agencies counsel children from that home, childrens' aid society under the Bill 107? Does your agency counsel children?

Ms. Scarth: Childrens' aid societies, yes, would counsel families or children from broken homes as part of their mandate, yes.

Mr. McLean: And if an award was made that those children would be awarded to one parent, what recourse has the other parent got in legislation?

Ms. Scarth: There are two situations here. If the childrens' aid were counselling children on the broken home and there was a protection problem, childrens' aid would take the protection case before the court in which case the court would make the decision as to where the custody would be awarded if that was the case. However, in a straight situation where there was no protection issue, a custody matter would be resolved under the law. The Childrens' Aid Society would not deal specifically with the custody matter, only if there was a protection matter involved in the broken home.

Mr. McLean: I guess the point that I am trying to get at is in a lot of cases, some people don't know who to turn to to get what they call justice, and if they have to work within the agency that the case was involved in, they feel it is a problem. I am looking at this jurisdiction of the Ombudsman. If there is one agency that most people can apply to get some help because it seems to be difficult to get it

within a lot of cases, and that is why I am looking at, what advantage it would be to have the Ombudsman have any jurisdiction over it at all, and I think it could be, that they may have. Anyhow that was not actually a question, it was more or less an observation after a question.

Mr. Philip: A pretty intelligent one though.

Mr. McLean: If you want to comment on it, fine.

Ms. Scarth: I am not quite certain. I understand you are concerned about families who have no recourse if they are having a dispute over custody. My understanding is if there is a custody dispute, it would be proper before the courts as to actual custody if there is no protection involvement. Childrens' aid would only get involved in that dispute if there was a clear protection issue for the child, in which case again it would be a court situation and the Ombudsman would have to answer that. I am not sure what jurisdiction the Ombudsman would have while there is a court process on in either of those instances. That is my understanding.

Madam Chairperson: Mr. Pollock?

Mr. Pollock: It is my understanding right now that childrens' aid societies, all the different children's aid societies all across the province can make their own sets of bylaws as to how they operate, and you, as your ministry, can approve that or turn it down. Is that a fact?

Ms. Scarth: Actually I would like Andrea Walker, our legal services person to speak to the bylaw because she is responsible for the bylaws of the societies, so I will step aside and let Andrea Walker our director of legal services respond to the question.

Mr. Pollock: That is fine.

Ms. Walker: The Act contains a requirement that the Minister of Community and Social Services approve the bylaws of childrens' aid societies, and in order to assist societies in drafting their bylaws and in following through on the ministry's policies with respect to bylaws and general operation of societies, the ministry did prepare and distribute to societies a number of years ago a model bylaw that contains some of the matters that were felt to be important by the ministry.

Mr. Pollock: But, for instance, if a Childrens' Aid Society came forward with some bylaws that you did not like, could the Ombudsman step in then and get involved?

Ms. Walker: What we would normally do--

Mr. Pollock: Under the present time I should say.

Ms. Walker: Under the present time, the minister has the authority to approve the bylaws. We would enter into discussions with the society through the area ministry

office and the program supervisors with respect to the provisions in those bylaws.

Mr. Pollock: At the present time if there was a dispute between a director of a childrens' aid society and a worker, the Ombudsman would have no jurisdiction there at the present time at all?

Mr. Zacks: That's right, no jurisdiction.

Mr. Pollock: Okay. That is one thing, and section 22 where the minister has the right to take over a childrens' aid society, that has only happened once I understand. Has there been any such way, to your knowledge, where the ministry has threatened to take over childrens' aid societies or do you know?

Ms. Walker: There have been situations where the ministry has worked with childrens' aid societies who had difficulties for one reason or another. In some cases ministry staff have been seconded or have gone in to assist childrens' aid societies to carry out their mandate while various problems were being resolved.

Mr. Pollock: Getting back to the other question that I just made, therefore if the Ombudsman has got no right to step in between the director and a worker, then a case could just sit there and never get resolved if there is a dispute?

Ms. Walker: Do you mean the director of a childrens' aid society?

Mr. Pollock: A worker in the childrens' aid society.

Ms. Walker: The ministry does have a mandate to supervise and does have authority to direct childrens' aid societies if those problems are brought to their attention.

Madam Chairperson: Mr. Campbell.

Mr. Campbell: I wanted to pursue the line of questioning that I had and some of the questions have been answered so it will be shortened. Have been asked by others, and therefore I can finish up the line that I was trying to pursue on the supplementary. The first question I have is under the section 64 review, and I use that for the basis of argument. How many levels are there in the initial complaint to the CAS to the final decision-making appeal body?

Ms. Yack: My understanding is that it would be at least to the worker's supervisor. Usually there are other levels of supervision before it gets to the board of directors.

Mr. Campbell: To clarify, between the last step of the CAS and the last step of the ministry, in that intermediate area.

Ms. Yack: If someone is not satisfied with the

response of the board of directors, they can request a review by a director appointed by the minister.

Mr. Campbell: That is the last step before it would go to the divisional court of the Ombudsman theoretically? The Ombudsman has already stated in the last step that they have the right to get in.

Ms. Yack: They can investigate the ministry, and it is a director appointed by the minister, but the last step under the CFSA is a director appointed by the minister.

Mr. Campbell: So you say that the CAS is somewhat standardized. I realize there are differences, but let us say it is the supervisor of the worker through the director to the board of directors, the three steps would relatively be standard inside the CAS?

Ms. Yack: I would think so.

Mr. Philip: May I ask a supplementary. At each stage of the section 64 review, can you tell me who collects the information on which those decisions were made in favour or against the applicant? Who is the investigator? I recognize once it gets to a certain stage, you talked about getting legal counsel and all this kind of thing, but at the earlier stages, what happens? Who does the investigation? Who collects the information?

Ms. Masters: At the stages when the situation is being investigated by the Children's Aid Society where it is part of the internal complaints procedure, it is the children's aid society personnel who would be responding to the complaint as far as I know.

Mr. Philip: They are investigating themselves?

Ms. Masters: It would generally be up the line, the supervisor, the manager.

Mr. Philip: Priests I know who hear a lot of confessions, tell me that examinations of conscience are not always too truthful, and I guess the problem that I have is that if you cannot be truthful with yourself or your priest or with God, why are you going to be necessarily truthful with some tribunal or examination body.

Madam Chairperson: Thank you, Mr. Philip. I do not see anyone replying to that.

Mr. Philip: So at the early stages then, you are doing your own internal self-examination. Tell me at the stages when other people outside then become involved and who are they and who does the investigation?

Ms. Masters: The you I presume you are referring to is the Children's Aid Society?

Mr. Philip: Yes, until it gets to the ministry in which case it really is you.

Ms. Masters: And if the complainant has exhausted that, it has gone through the board of directors of the society that person may ask for a directors review. At that stage as we have referred to, the practice of the ministry is to have a director other than a director in the local area office conduct that review. The procedure would be for us to notify our legal services that a director's review has been requested and then to pursue the request that a director may be appointed to conduct that review.

Mr. Philip: Which gets me back to the original statement that was made about there might be duplication if the Ombudsman in fact were involved at the earlier stages. And I ask you, I promise I am not going to ask as many supplementaries as Mr. Sterling Campbell's question.

Madam Chairperson: May I suggest just one more.

Mr. Philip: How can you suggest there will be a duplication if the Ombudsman's staff would be simply doing the same investigatory work that would have been done internally by the CAS and externally by a director of another CAS brought in, and eventually by whoever is appointed by the ministry? Where would there be duplication? Surely it would be simply a more independent investigator doing the same work that you are already claiming that you are doing anyway or that they are already claiming that they are doing. Is there any duplication in that?

Madam Chairperson: Miss Scarth.

Ms. Scarth: I do not think I understand.

Mr. Philip: Well, my colleague who is a lawyer would be pleased to rephrase it. If there is duplication, how would there be duplication under the Ombudsman's system where you already have a series of people doing investigations at various levels? The internal investigators, then the supervisors, then the outside supervisor, I guess, from another childrens' aid society, then somebody appointed by the ministry. How would there be duplication in having simply somebody from the Ombudsman's staff doing that identical kind of investigation? Where is the duplication?

Ms. Scarth: I guess my understanding of the Ombudsman's role is that the Ombudsman does insist or request that any other earlier or lower level reviews be done before the Ombudsman moves in and takes over. That is my understanding. So that we already have these internal complaints procedures, and frankly, they work most of the time. They do get resolved quite often between a supervisor and a worker when the supervisor does not realize that the worker has done something maybe the worker ought not to have done.

Just as an example, I get a number of calls to my office when people do not know who to call about complaints.

A family called a couple of weeks ago, and they were getting caught between a children's aid society and a children's mental health service, neither of them who wanted to give service to this family although they had very good service from the children's mental health centre at that point in time and had had prior good service by the same children's aid society. So it took me one quick phone call to the area office to the program supervisor who spoke to the worker. The family was dealt with and called me back and called me within three-quarters an hour. That was fast and speedy service. So my sense is that most of the complaints that I hear about get resolved at that level. They never even get into internal complaints procedures. They certainly need to get pointed out when the program supervisor calls the agency and it was dealt with.

So my sense is those kinds of things we would always want to have them quickly. They need not escalate. The family was frustrated. It happened that morning. They thought their child was going to get dumped out in the streets they thought. The child was not, but that is what they thought, so a speedy and quick and sensitive resolution I think happens most of the time.

I have worked in child welfare a long time in BC, Manitoba and here, and I have worked in the system and I did not like the system before the Child and Family Services Act. I think the Act has made an enormous difference, in my view, in terms of the way things are resolved. The agencies are supposed to have this thing posted. You should walk into children's aid and you should see pamphlets and they should be handed their complaints procedure. I would hope they would get resolved at that level before getting out of control. So you would have those initial procedures in my view in any event whether the Ombudsman is involved or not.

Mr. Philip: But if resolved, they would not get to the Ombudsman so therefore there is no duplication at that level.

Ms. Scarth: No, not at that level. As we have a number of different reviews, the 64 then goes to a director and a director can be hired outside the ministry if that is the decision, and a director reviews it and may recommend one thing or another. So that I guess at that point there isn't a duplication. However, if the Ombudsman has to again--I guess my duplication really is that the Ombudsman would have to hire and train people for the expertise and I think the system does that already there at that level. Possibly that.

Mr. Philip: What they might do is hire the same people that might be doing an investigation for you, but the very fact that they are reporting to an Ombudsman gives them the appearance, if not the actuality, of the independence. I think I have got my answer. There is no duplication is what I have been told. It is simply that the investigator would be in the Ombudsman's office rather than in the CAS.

Madam Chairperson: Thank you, Mr. Philip. Mr. Campbell, you may continue.

Mr. Campbell: I thank my colleague for recognizing the fact that I am not Mr. Sterling, and I think we are making headway.

My original question that led to the supplementary dealt with an understanding of the investigation process that would lead into the point where the Ombudsman could move in under their jurisdiction under the normal today's rules, and I guess what I was trying to understand, and I thought I had as a former director of the CAS, I thought I had the policy kind of understood was that there were those internal levels and then it went to the ministry.

At the end of the ministry investigation the Ombudsman moved in in any case. That part of it is clear. I would like to move though to the type of representation at any of the investigations once it has left the CAS and gone to the ministry. Is it normal for the child to have a good office or a representative of the child, a lawyer, hired by the child or appointed through that system or by the family to any of these levels once it leaves the CAS and goes to the ministry having to hire a lawyer, any one of them having to hire a lawyer either under legal aid to represent them to get the thing resolved?

Ms. Scarth: It is certainly possible for them to do that. It isn't necessary.

Mr. Campbell: In your experience is it being done on any regular basis at all?

Ms. Scarth: It certainly has been done. I can think of one review or one request for a review where a person asked for a review and there seemed to be several remedies under the act for that particular situation, and the woman did speak to a child advocate lawyer to find out which review process would be the best one to undertake and the lawyer did advise a certain route, which was I believe was for the residential placement advisory committee and that one was resolved that way. So people do choose that.

Mr. Campbell: When you said child advocate meaning your ministry child advocate or a private child advocate?

Ms. Scarth: No, it was a private lawyer.

Mr. Campbell: So in that case that legal counsel was available for those people moving through that part the of the system, and it is utilized or has been utilized at least on one occasion?

Ms. Scarth: Yes.

Mr. Campbell: After all of the reviews under section 64 have been exhausted then the Ombudsman can move in at that point. I want to go back to my original question way back which was a supplementary, and the time line that starts with CAS initially, I realize you could not answer the question about the initial one because you don't know

the ones that were resolved at the lower CAS level.

Let's pick a point in the, say, the board of directors level of the CAS, let's back up to that point and say from that point to the end of the Ministry of Community and Social Services involvement, what is the time line because you have some cases leading up through the system. Can you give me a time line or an idea of the length of time that it has taken?

Ms. Scarth: Mr. Campbell, I would have to get that information to you. I think it would depend on the nature of the complaint, how long it would take.

Mr. Campbell: I realize that, but can you give us any idea absolutely? I know you can bring back the information, but it might be helpful to know if there are any extended time lines.

Ms. Scarth: Unfortunately, I cannot give you a time line today. I can try and find out for you and get the material to your committee, and I will endeavor to do that. I can give you a similar time line. I mentioned earlier Section 138 which is a review on an adoption proceeding where the time from the beginning to the end of the request for the review was under two months and that was from beginning to end.

Mr. Campbell: From initial complaint?

Ms. Scarth: From initial complaint until that decision was implemented.

Mr. Campbell: All right. Well let's move into some of the other sections. You have answered Section 138. The placement advisory committee is under Section 34-36. Do you have any idea? This one is a little more complicated than the advisory committees.

Ms. Yack: There is a statutory timeframe of 30 days.

Mr. Campbell: So there has to be resolutions. I will only use those three examples because I don't want to take up the time of the committee and beyond that, but in Section 138 and the Section 34-36, could I hear from the Ombudsman's office, would they get involved after those time lines had expired?

Mr. Zacks: If it is up to the director, yes, it would. We currently have jurisdiction over employees of the Ministry of Community and Social Services and the directors. So any actions that they take can be investigated by the Ombudsman.

Ms. Meslin: I think for clarification, you should realize that the investigation is not the investigation of the issue that was before the Children's Aid Society, the investigation to determine whether in fact the director or employee of the ministry made a reasonable decision. So we don't go into that.

Mr. Zacks: It is an important point because when we start investigating summarizations, we do them through the back door because we don't have jurisdiction over the Childrens' Aid Society. We do have jurisdiction over government supervision of some those actions. What a governmental organization director would be looking at would not be the exact same issue that the Childrens' Aid Society would be dealing with which was actually decided in the field in the first instance.

The scope of the Childrens' Aid Society worker may be much broader by the time the issue gets distilled and it is moved up the system. We are speaking generally now. The oversight of a government agency is whether any tribunals were directors, whether they are exercising broad discretion or statutory powers of review. They are much more narrowly focused, and because our jurisdiction is limited to what a government organization does, there is only so much room we have to look behind that decision.

Depending on a kind of complaint, we can look a little further, but there is a line that we cannot cross, and we try to extend that line a bit, but it is difficult to do and sometimes we have to pull back because we are going to areas where we are not supposed to go. That is really what this is underlying. We cannot go beyond a certain line, and that is where the real concerns are.

Mr. Campbell: I understand that. I think though that when we heard the other day that there are a number of cases that you felt you had or the kinds of cases you felt you had lead to, and that resulted in two cases perhaps from somewhere like 40 -- I do not have the information in front of me, but I believe I am correct. I am trying to find out in my own mind what kind of cases these would be, given the information that Comsac has provided. So I guess I am just trying to decide, and I think it helps the committee to know what directions your investigations will take given what you have already told me. Your investigation still would be, in layman's terms, was the ministry's action appropriate?

Mr. Zacks: In general, yes. Appropriate, reasonable, just.

Mr. Campbell: You are adding a number of legal definitions, but I am saying the bottom line is that the person going through all of these processes, through the ministry and through your investigations, comes out and says yes, when the day is done, I have received redress. Is that the reason the Ombudsman's office is set up, to protect that individual person against that?

Mr. Zacks: Yes.

Mr. Campbell: And the questions that I gave, I am trying to demonstrate that there are other avenues available to the individual in these kinds of situations.

Mr. Zacks: There are indeed, as there are in virtually

every type of government organization we investigate. There are avenues of appeal and there are very few organizations where there aren't. Just to finish up on that point, you would like to know the kinds of complaints we investigate. We have no control. We investigate complaints that come to us. We cannot predict with any kind of specificity the types of complaints that would come, if we would have jurisdiction over an organization.

It is possible that any complaint, any type of action or decision or recommendation or omission to fact that a childrens' aid society might take might eventually wind its way up to the Ombudsman. So there is no way of predicting. We have no control. We can't make people complain to us because we cannot pick and choose our complaints. Whatever comes through the door, we examine, and if it is a jurisdictional complaint, we investigate it.

Mr. Campbell: Final comments. The first one is the general one that every ministry would sense a duplication and a duplication of cost, and that is not the reason the Ombudsman is set up. It is not appreciative for the ministry representatives here, that any ministry probably could make the same argument of duplication of cost. That is not the point of the Ombudsman's office.

The second point is that I tend to agree that since the Child and Family Services Act has come into play, in order of finding of roles and relationships between the minister and the CASSs, and I think it is still a little early to judge how effective it has been, save one statistic, that a number of children in care have been declining or seem to be declining every year, if I understand the stats for last year, I think we have only 1986, but I understand 1987 is lower than 1986 and so on. That may be one indicator that things seem to be, and the general child population is decreasing, and that may be one indication that it may be working because there are resolutions to the problem. Thank you, Madam Chairman.

Mr. Carrothers: Madam Chairman, I think most of the questions I had have been asked and answered. I just wanted to get an idea in my mind since I am not that familiar with the childrens' aid societies and this whole structure that we have been speaking of today, how it works and how the Ombudsman might fit into it more than he does now, I get a sense, you operate regional offices that supervise the local CASSs. Childrens' aid societies are created locally. Who appoints their boards and things? Do they get elected by the local membership or what happens?

Ms. Walker: The Childrens' Aid Societies are separately incorporated corporations set up under the Corporations Act. They are charitable corporations without share capital. They have a board that is a combination of directors elected by the members and municipal representatives that are prescribed in the regulations according to their territorial jurisdiction.

Mr. Carrothers: So the ministry does not appoint any

members of the board?

Ms. Walker: No.

Mr. Carrothers: Although you do appear in approved bylaws and this internal review procedure and so on, so that the ministry does set certain internal or at least approve certain internal jurisdictions, but after that, all decisions are made by the society and they are pretty autonomous. I guess I have a question for the Ombudsman's office.

We have seen some kind of appeal procedure within the structures. Your office normally does not get involved. You do not get involved until every appeal has been made which means automatically they can go through this process up to the director's level. You already get involved in the director's level, so what extra jurisdiction would your office be looking for? By finding that out, I thought you were involved already.

Mr. Zacks: The jurisdiction that we are looking for is to be able to examine all the actions that have impacted on the child through the childrens' aid system throughout the entire process, saving the courts because we have clearly no jurisdiction over that. The Ombudsman would like to be able to review applying a kind of independent Ombudsman reviewing process to all the actions and decisions that have impacted on children in those types of complaints that come to us.

We are not able to do that at this point. We are able to investigate the decisions that are made after all the preliminary decisions and subsequent reviews have been undertaken, and they have finally worked their way to the director and are put into the ministry's hands. We are limited in the scope of our investigative abilities because of the fact that we have no authority over childrens' aid decisions. As far as we are concerned, childrens' aid or the actions taken by childrens' aid are the same as the actions taken by a municipality or independent individual.

We have no authority to investigate their procedures, their actions, policies, how they interpret the bylaws, how they interpret the legislation, those types of things. Things that we currently do with government organizations that we have investigative jurisdiction over. That is the role the Ombudsman is raising for your consideration.

Mr. Carrothers: The appeal procedure is someone who does not like the decision, but would still go to the director before it went to you.

Mr. Zacks: Yes, it would. But we would be able to look at the steps taken all the way along.

Mr. Carrothers: Are you saying that right now you do have jurisdiction once it gets to the director's hands?

Mr. Zacks: Only that small part that the director has decided. Only over the director's decision. We cannot go

behind those actions. We may decide that some step taken by a childrens' aid society is unjust, perhaps contrary to law or what have you. We cannot make that type of conclusion. We cannot recommend that a childrens' aid society take steps to remedy it. We can only look at what the director has decided.

Ms. Meslin: I think what may be confusing you is that you assume that the director looking at everything, then leaves the door open for us to look at everything. We can only look at whether the director used his discretion reasonably. Did he follow all the steps that were necessary to examine the issue. We cannot look at the issue. We can only look at his ability, what his responsibility is. Did he follow his responsibility, does it look like he was reasonable in examining the issue, and if he was, that is as far as we can go. We cannot go back to the original issue and say did the worker, did the Childrens' Aid Society do X, Y and Z correctly or as incorrectly as the complaint alleges.

Mr. Carrothers: You are saying your investigative procedure is somehow incomplete?

Mr. Zacks: Well, it is incomplete. We cannot do it.

Mr. Carrothers: But if someone comes to the director and says this worker didn't do it correctly, the director would obviously look into that?

Ms. Meslin: That is right, and as long as the director looked into it correctly, we have to say that is fine. If the director did not follow the right steps, we can say no, director, what you did in examining the issue was not follow the right steps. You did not speak to so and so, but we cannot look at the workings of the organization, of the Childrens' Aid Society per se, if that is the essence of the complaint.

Mr. Zacks: Put it in another context. If the complaint that goes to the director is a procedural complaint, you would not be able to look at the merits of that decision which resulted in a procedural complaint. We would not be able to go behind the actual argument that some jurisdictional errors were committed. I look at the merits of the decision. Whether the actual decision was a reasonable decision, whether it was a just decision and comment on that even though we would have facts before us that would suggest that further investigation is warranted and could lead us to a conclusion that something should be done at the society level to remedy a problem that we think may be there. We cannot say that. We do not have the authority to criticize that. That is why we are trying to expand the scope of the Ombudsman's investigative procedure powers.

Mr. Carrothers: So what you are saying is those five or six a year that went to the director's level, that you cannot really do anything, even though technically you have jurisdiction because you were not able to look into--

Mr. Zacks: We only have jurisdiction over a director's decision or recommendation. We cannot go behind the complaint put to the director and look at what led to the complaint.

Madam Chairperson: Mr. Carrothers, this line of questioning has generated an enormous amount of people with supplementaries. Are you finished with that particular one? We found it most stimulating, and if you have finished that particular question, and then I can come back to you.

Mr. Carrothers: I wanted to hear what the ministry had to say, but I can certainly pass the floor.

Madam Chairperson: Do you want to hear what the ministry has to say first?

Mr. Elliot: The ministry is saying something to this line too because I think we are concerned here with duplication, all of us are, and my supplementary to Mr. Carrothers's question is you are afraid of the duplication, but the Ombudsman's office says that they cannot really do an investigation with the present format. My concern has to go back to the child that is involved in each case. Is there any way that if that office feels that they cannot do a correct investigation, that it would put the child in question in any kind of jeopardy that they aren't already under to have a second look at it by an outside agency like the Ombudsman's office?

Ms. Scarth: I would think that it may just be another matter. I mean, we did speak to duplication, and if the Ombudsman started earlier, it would kind of re-go over all the other things. It would be a duplication of a process that had already gone into by the ministry. My own view is that the ministry's role is to always look at the best interests of a child in this situation. That is the focus of our review. The Ombudsman then would be reviewing exactly the same subject matter that the ministry had already done, so that speaks to the duplication.

I guess the only other concern that I would have is the length of time that it might take. In some of these situations, you really want to resolve as quickly and get on with it, particularly if it involves a placement decision around a young child. We would want that done expeditiously, and I will get information about how long our reviews take. The ones I have been involved in have been quite quick, but I am not sure about the rest of the province and I will have to do that. The Ombudsman during a second review may lengthen the length of time it will take to make its decisions. That is all.

Mr. Elliot: That is the only jeopardy the child would be put under, the length of time. I could pull Mr. Philip or Campbell at this point and do another supplementary, but it is really out of the question.

Madam Chairperson: Mr. Pollock has a supplementary on

this.

Mr. Pollock: Mine is more or less just a little bit of a clarification. As far as I am concerned or know that a legal representative mentioned how the childrens' aid societies are formed, that they have their own elected body sort of thing and then there is municipal people. I know in some cases, there are special interest groups such as foster parents that are allowed to appoint one person to a childrens' aid board. I just wanted to put that on the record, Madam Chairman.

Madam Chairperson: Thank you. Mr. Carrothers, back to you.

Mr. Carrothers: Well, part of what I wanted to do has already been taken up. Perhaps I could ask the Ombudsman's office. There was a point raised about time delay. Did you have any comment on if you got involved, you might delay on what has to be a very quick decision?

Ms. Meslin: I would say that depending on the situation. We have situations today where someone in need comes to us who has a social assistance problem where they need interim assistance and it has to be immediate and we do it immediately depending on the particular issue. I do not see that as a particular problem.

Mr. Carrothers: Thank you.

Madam Chairperson: Thank you, Mr. Carrothers. Mr. Philip.

Mr. Philip: I will ask you a question about something that I do know a great deal about, and that is I was reading with considerable interest the licensing part of Part 9, and one thing that I am somewhat of an expert on is the British Zoo Licensing Act, and when I read that act, which I have plagiarized considerably for a bill that I suggested to the Ministry of Natural Resources, I see some fairly specific regulations.

When I read this act as to the criteria whereby a children's residence will either be licensed or not licensed, I see some fairly vague generalities, and my question to you is do your regulations, and I have read the regulations that we have been provided, but are there other regulations that flush out exactly what are the criteria whereby a residence is measured and what are the criteria whereby a Childrens' Aid Society would remove the authorization from a particular residence?

Ms. Walker: Which regulations are you referring to? Do they have a number?

Mr. Philip: I know that there are general regulations that apply to this act. When I read the section of the act that deals with the licensing or the removal of licensing of children --

Ms. Walker: There are specific regulations in the general regulations under the Act that apply to Part 9 and also the placing of foster children, and they set out how the agencies are to be operated.

Mr. Philip: And if I were to go from one childrens' aid society to another childrens' aid society jurisdiction, would those regulations be so specific as to guarantee that there would be the same quality control from one area to another?

Ms. Walker: The regulations set the minimal standards to be applied across the province for those persons who operate childrens' residences or who provide residential care. Childrens' aid societies are one of a number of operators who can be issued licenses to operate residences or to provide residential care. They are worded in such a way that they are to be applied consistently throughout.

Mr. Philip: And are they regulations that I, as a layman, could clearly understand and come to a judgement that this residence is meeting the regulations and is a healthy environment for a child or this one is not, or are they a series of generalities that would be open to a lot of subjective interpretation?

Ms. Walker: When we drafted the regulations, we tried to put them in as clear and unambiguous language as possible, including sections that deal with the requirement of a plan of care for every child who is in a particular residence. The regulations include specifics as to what goes into a plan of care. We have regulations dealing with physical plant? There are also a number of manuals and directives that supplement those regulations that are used. The program operators and the licensees are aware of these, and they are used as part of the licensing process as well.

Mr. Philip: How many licenses have been revoked, do you know?

Ms. Walker: There have not been an inordinate number of hearings. There have been some licenses that have been surrendered after negotiation and so forth, there have been approximately I would say about a dozen hearings in the last number of years dealing with residences and other licenses.

Mr. Philip: Would you investigate on the complaint of third parties so a medical doctor or a social worker might, in fact, say this residence is, in my opinion, not healthy?

Ms. Walker: Yes, and there are any number of people who are in and out of residences. Childrens' aid societies are required to supervise the children who are in their care. As part of that, they are required to go into the residences and they have an obligation to ensure that care is being provided that is appropriate for those children. The ministry program supervisors go in, there are public health authorities in and out, doctors, nurses, all sorts of people. The children go into the public school system so that teachers are quite often aware of a child's particular

situation, and if anything is reported to us, then we do investigate.

Mr. Philip: And would they be so specific as to say that a child must have a bath so many times a week, a child must have a certain level of nutrition, there must be a certain amount of protein and so forth?

Ms. Walker: They do not specify the number of baths. They deal with the provision of clean clothing and ensuring that the children are clean and so forth, and the policy directives and guidelines expand on that. There are different requirements for different children particularly as far as nutrition goes, and we do have a general regulation that deals with nutrition, and the particulars of it are fleshed out in manuals and so forth, and we apply the Canada food guides and so forth.

Mr. Philip: You see, the complaints that I have had, and that is no indication of a general pattern, but the ones that I have been concerned about have been medical complaints in terms of hygiene. If a child is developing rashes because he or she does not receive proper hygiene, a proper number of baths and that kind of thing, then I am concerned about that. I get the feeling in talking with people in childrens' aid and social workers that it is very hard to pin down and to get action on that because, quote, it is a subjective thing.

Now unless the child has such an odour that none of the kids around him can stand up in school or they faint, and because of it the teacher says you have got to come and see the lice or something, then it is hard to deal with that, but it may be a very irritating thing to a child or indeed to one or more of the child's parents. Yet the investigation does not seem to get results in those things, and Dr. Henderson I am sure probably has some experience as a medical doctor with having to deal with that kind of thing and he may have some comments on it.

My other question is in the case where you take over a childrens' aid society by a trusteeship or whatever Frank Drea did, an order in council, is there an appeal mechanism or how does that childrens' aid society get back into the mainstream, if you like, of the system? What is the appeal process?

Ms. Walker: There was a time limit in the order in council. I believe it was for a period not exceeding a year, and what the ministry did both before and immediately after the order in council was passed was to plan to work--first of all, the immediate concern was that the ongoing operation of the society not be affected and that it be supported where necessary. Steps were taken to ensure that the society can continue to fulfill its day-to-day operating mandate.

The second thing that happened was that as a result of various operational reviews that had been conducted of the Childrens' Aid Society, plans were developed and steps were set out and followed to ensure an early return of the

responsibility for operating that society to a board of directors. I think that re-enforces the relationship between the ministry and the society. While the ministry supervises societies, societies are independent corporations, and the concern was that that society continue to operate on an ongoing basis as an independent corporation as soon as possible.

Mr. Philip: I guess what I am concerned about, and I am as concerned with hospital boards as I am with childrens' aid societies, is what is the recourse of a childrens' aid society who may feel that they are taking a political rap or that they have been unjustly put into a trusteeship because of faults that are not entirely of their making? Is there an appeal process whereby there can be an independent adjudication as to whether or not that particular childrens' aid society should have been taken over or not?

Ms. Scarth: I will answer that, and I would be interested in the Ombudsman's response as well. I was at the Childrens' Aid for part of the time during the takeover, and again, the Ombudsman has, in my understanding, the authority to review anything that the ministry did while the ministry was in charge of that society for those months. The Ombudsman has the right to come in and review anything that the ministry did during that time. That is my understanding. I think the power is that broad, and in fact the Ombudsman has done just that in one particular case in which I was involved.

Mr. Zacks: Yes, and I still have not heard what has happened.

Mr. Philip: So there is protection under the present Ombudsman's jurisdiction for that kind of thing.

Mr. Zacks: If the ministry were to take over a childrens' aid society, we would have all the investigative powers over that society and all its actions that we are asking for now in respect to childrens' aid societies that have not been taken over. So we could investigate all the decisions that we have made once all the review procedures had been taken. So if the ministry decides to take over a society, we have jurisdiction over that childrens' aid society because it is now a governmental organization for that time.

Mr. Philip: And one last question. Are the criteria for a takeover spelled out to a point where you, as the Ombudsman, can come to an objective conclusion or is there still a lot left to the -- obviously if somebody is stealing, then it is an objective criteria that nobody would question, but when you are getting into a lot of other things, I am not talking about a specific case, but--

Ms. Meslin: You are talking about before a takeover?

Mr. Philip: At the time of takeover after a takeover, if there is an appeal, are there objective criteria that you can point to and say here are the reasons the Childrens' Aid

Society did not meet criteria A, criteria C, criteria F and therefore the actions of the ministry was correct?

Mr. Zacks: If you are asking whether we could investigate a ministry's decision to take over a childrens' aid society, the answer is yes.

Mr. Philip: Yes, you answered that a few minutes ago. My question is when you do investigate, are the criteria spelled out and are they of an objective nature that you can actually say yes?

Mr. Zacks: I cannot answer that. I have never seen the actual order in council that caused a takeover.

Ms. Walker: Perhaps I could speak to that. The takeover you referred to was implemented under the provisions of the Ministry of Community and Social Services Act, and there are very specific criteria that have to be met before an agency can be made subject to the operation of the ministry by order in council.

When we enacted the Child and Family Services Act, we included some very specific criteria relating to children's services and children's programs in the legislation. There is now a provision in the case of childrens' aid societies and other agencies for a hearing before an agency is taken over. So there is a further step that has been introduced.

Madam Chairperson: Mr. Elliot.

Mr. Elliot: I would like to change the idea completely here, and I am looking at page 3 where in item 3 it says, "The system that is in place encourages resolution of issues at the local level." It goes on to say, "In fact only Section 64 complaints have resulted in reviews by a director appointed by the minister."

I would like to start off by being very positive and saying that is quite a record with respect to just having six of the Section 64 complaints resulting in reviews by a director being appointed. I would like to really address this idea of the issues being resolved at the local level because reading between the lines there in making a statement like that, I think what the Comstoc is saying is that if the Ombudsman's office were involved, that you could not as readily resolve the things at a local level.

My concern has to do with presentations that have already been made to us by our local childrens' aid society where they are in financial straits for a couple of reasons because of the way things are revolving, and one of them has to do with the hard-to-manage type of child that they have to look after because the word child sometimes is a misnomer.

I have taught school for 28 years, and because I coach football and things like that, I know that some 15 year olds come weighing between 2 and 300 pounds, and if you have got a hard-to-manage child under your care and he happens to

object to something and if he weighs 250 pounds, it takes pretty good people to keep him from breaking things up.

What I suspect that all of ministry.

The office of the Child and Family Service Advocacy that is referred to in this paper quite often gets involved in individual situations where there are hard-to-manage children and the society is asking for help or advice on if there is something that we can do to place this child where they would be able to handle this child better. So that option is available, so there are other kinds of situations and other kinds of procedures that are available because they are more related to a society raising concerns than they are to an individual or public citizen raising concerns.

Mr. Elliot: Thank you.

Madam Chairperson: Thank you, Mr. Elliot. Dr. Henderson?

Mr. Henderson: Thank you, Madam Chairman. I have a short question. This question of duplication, talking about duplication and redundancy, it seems to me that there is duplication in one sense in all of the activities of the Ombudsman because there is not always, but very often some kind of mechanism of appeal, inquiry, sometimes many mechanisms that have to be exhausted before the Ombudsman becomes involved. How would expanding the jurisdiction to include CAS be any different? Perhaps there is something here that I am missing.

Ms. Scarth: I am not certain. You know, I really felt I tried to answer the duplication. I don't think it would be any different than maybe the Ombudsman does in other areas. My sense is that if the Ombudsman were brought in at an earlier stage and reviewed all the things that the ministry had reviewed, it is a duplication and it is a point as to whether it is a good or bad thing. It will cost more money. It is not that it is a major concern, it is just a comment more than anything.

I am not sure from reading the Ombudsman's paper whether or not if the Ombudsman was in at an earlier stage, whether or not people would pay as much attention to those earlier reviews knowing that the Ombudsman would be there and so you may have many, many more reviews. I don't have any idea whether the estimates are accurate or not. People might not pay as much attention to trying to resolve them at the lower level knowing they can always go that extra route. I don't know. It is conjecture on my part, really.

Mr. Henderson: I would not share that concern personally. I think that the opposite argument could be made that they would pay even more attention to the earlier attempts to resolve things knowing that the Ombudsman might later become involved. Thank you.

Madam Chairperson: Mr. Bell.

Mr. Bell: Thank you, Madam Chair. These questions can be answered, Ms. Scarth, by anybody that you believe is best to assist, and I refer specifically to the four areas of your comments in respect of the Ombudsman's proposal for jurisdiction. At the risk of some duplication, I would just like to canvass some areas under each of them. We need not repeat specifically the fact that at some levels in some areas the Ombudsman already has jurisdiction over some matters that affect childrens' aid societies, albeit in an indirect way.

Members of the committee in your material and in the dispute resolution float chart, you will see an example of at least four or five. We have seen in your material, and you have described that there are other areas, maybe not appropriate to call them dispute resolution mechanisms, but other areas of review or monitoring either at the local society level or at the ministry level where the Ombudsman probably does not have jurisdiction currently. Are we agreed?

Ms. Scarth: Yes.

Mr. Bell: And yet can you refer the committee to any specific reasons why the Ombudsman should not have jurisdiction in these areas where today he clearly does not?

Ms. Scarth: It is a very tough question. I will try to answer it to the best of my ability. I think I mentioned specifically reviews under Section 138 which are reviews where a family who may be asking for adoption is turned down by a society for a particular placement and another family is selected.

Mr. Bell: Could I stop you there. Because as the committee understands the process thus far, that is a matter that can go to the provincial director.

Ms. Scarth: Yes.

Mr. Bell: And the Ombudsman accordingly has jurisdiction over what the director may or may not do, and if there is a process underway where the Ombudsman is aware that there will be a request under 138 for the director to review it, the Ombudsman will stay out of it until the process is completed. So that probably comes within the area where he has already got jurisdiction and will, in practice, stand down until the process is completed.

Ms. Scarth: But my understanding of your question was you wanted to know if you had any specific areas where the Ombudsman is asking for jurisdiction and does not have it. No, he would not have it at the level of the 138 review at that level, but he is asking for it.

Mr. Bell: All right.

Ms. Scarth: And I am trying to come up with a situation where I think it might be counter-productive. That

is what you are asking me to do, isn't it?

Mr. Bell: Yes.

Ms. Scarth: I think in some of those situations, it really becomes a case management decision, and you may in fact have two families who are relatively equal in terms of their suitability for a particular child, and you have one child and you have two families, and inevitably one family will be disappointed no matter who arbitrates that kind of decision. So my judgement would be that it would be better for people who are skilled in making those decisions to arbitrate that kind of a decision rather than having an external party come in from the outside to make that kind of decision. Inevitably one party will be upset. It just always happens when those situations happen.

Mr. Bell: How is that any different than the Ombudsman waiting until a director has, through the process, had an opportunity to review or decide not to review or not to take any steps? How is the Ombudsman's involvement going to affect the ultimate outcome any differently at the earlier level or at the later level?

Ms. Scarth: I am not sure I understand.

Mr. Bell: If I understand the process now, the Ombudsman has jurisdiction, depending on the circumstances of the complaint, to make a recommendation to the director which would have the effect of reversing, if you will, a decision taken at the local level. Are you with me?

Ms. Scarth: Yes.

Mr. Bell: How is it any different then, giving the Ombudsman the potential for jurisdiction at the local level directly or earlier than it is now? I am not saying it is not. I am just interested in finding out for the committee if there are any specific reasons other than the ones you have indicated, why the Ombudsman's involvement would adversely impact the process?

Ms. Scarth: I have some difficulty in answering that. My sense is that it is a case management decision, and normally one would hope that the case management decision made by an agency is correct and the ministry would go in to look at whether or not it was correct in terms of process, whether or not there was due process and all that kind of thing. I would think that the ministry director reviewing that would be an experienced person in the area of child welfare placement and would have more specific expertise to make a judgement in that area. My sense is that that is what has happened in this particular review.

Mr. Bell: Okay. Are there any other areas or any other ways -- I do not mean to put words in your mouth -- where you or the ministry believed that the presence of the Ombudsman in an expanded jurisdiction role would adversely impact the process or the system?

Ms. Scarth: I don't think so. I think I mentioned earlier the possible prolongation, and that was answered by the Ombudsman.

Mr. Bell: Your comment number two about the advocacy for children role and the availability of such a system, when you read the transcript of yesterday, you will, I am sure, be pleased to read that the Ombudsman shares that view. In fact, if I understand it, it has a fairly significant working relationship between that office and his office in terms of the varying jurisdictions. We know that the Ombudsman already has jurisdiction over the Office of the Child Advocate.

Again, is there any specific way you can foresee the presence of the Ombudsman in this area adversely impacting upon the process or the system?

Ms. Scarth: One of my colleagues has just noted that in terms of the timeliness, what does one do with a child in the meantime if there is a dispute over a child, and that is in addition to the timeliness comment.

Mr. Bell: Yes. On the issue of timeliness, you and societies in general are very aware of the responsibilities, vis-a-vis the children under your jurisdiction. I take it though that in a practical way, if a society--this is speculations, and if you don't want to get into the area, then don't get into it -- but if a society were to have an emergent situation involving a child and there was a spectre of an Ombudsman investigation in respect of something that had just been done, I think the society is going to do what it has to do, vis-a-vis that child, and worry about the Ombudsman later, wouldn't you think?

Ms. Scarth: I will comment. The society would inevitably, in my view, do what was in the best interests of the child at that time.

Mr. Bell: And worry about who was investigating that later. Point number 3, that the issue of expertise, do you or your colleagues have any specific knowledge of the current Ombudsman's investigative staff and their expertise or ability to effectively and appropriately investigate the Childrens' Aid Society complaints?

Ms. Scarth: I mostly know what the Ombudsman wrote in his report was that they would require some special expertise and training.

Mr. Bell: To the extent that you or any of your colleagues here today have had experience in Ombudsman investigations, has there been any concern or view that there is an expertise or lack of expertise?

Ms. Scarth: I have only had experience with one.

Mr. Bell: Did you have any experience or concern of a lack of expertise in that area?

Ms. Scarth: I would not know because we just simply handed over our files.

Mr. Bell: Thank you. And item number 4. It is clear now the Ombudsman is not and cannot seek jurisdiction with respect to anybody that is dissatisfied with a court decision. It is not something that this committee will or the ministry need concern itself with.

Now, we may have already talked about this completely, the local level issue. Is there anything else that you can think of the nature of a concern or comment as to possible adverse impact as a result of the Ombudsman having jurisdiction with matters of local level decision-making?

Ms. Scarth: I think, Mr. Bell, it would probably have a greater impact on the Childrens' Aid Society system than on the ministry per se. I mean, we are already subject to the Ombudsman. My sense is that that would be a more appropriate question for the Childrens' Aid Society.

Mr. Bell: Thank you, Madam Chair.

Madam Chairperson: Mr. Carrothers, did you have another question, a supplementary that you had of concern some time ago?

Mr. Carrothers: No.

Madam Chairperson: Is there any further questions from any of the committee at this time? Seeing none, thank you very much for coming. Did you have any closing remarks?

Ms. Scarth: No, I would like to thank you for having us here to speak to this, and I recognize no system is a perfect system and some of the points made here will be taken back to the ministry. I also will endeavor to obtain the information that was requested in terms of the timeframes and whether or not there is a specific follow-up procedure in the area office.

Thank you very much.

Madam Chairperson: If you could make sure that the clerk gets that, he will make sure that we get that distributed.

Thank you very much again for coming today, and tomorrow, we will be meeting at 10:00 a.m. in this room again, and we will have the Ministry of Health before us to discuss the expanded jurisdiction question. Do I have a motion? Motion for adjournment from Mr. Pollock. We will adjourn until tomorrow at 10:00.

The committee adjourned at 4:20 p.m.

STANDING COMMITTEE ON THE OMBUDSMAN
EXPANSION OF OMBUDSMAN'S JURISDICTION
WEDNESDAY, AUGUST 17, 1988
Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: Nicholas, Cindy (Scarborough Centre L)
VICE-CHAIRMAN: Elliot, R. Walter (Halton North L)
Boşsy, Maurice L. (Chatham-Kent L)
Bryden, Marion (Beaches-Woodbine NDP)
Carrothers, Douglas A. (Oakville South L)
Henderson, D. James (Etobicoke-Humber L)
Lupusella, Tony (Dovercourt L)
MacDonald, Keith (Prince Edward-Lennox L)
Mackenzie, Bob (Hamilton East NDP)
McLean, Allan K. (Simcoe East PC)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella
Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Mackenzie
Tatham, Charlie (Oxford L) for Mr. MacDonald

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service
Bell, John, Legal Counsel; with Shibley, Righton and McCutcheon

Witnesses:

From the Ministry of Health:

Corder, David W., Acting Assistant Deputy Minister, Institutional Health
Sharpe, Gilbert, Director, Legal Services Branch

From the Office of the Ombudsman:

Meslin, Eleanor, Executive Director
Zacks, Michael, General Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, August 17, 1988

The committee met at 10:08 a.m. in room 151.

EXPANSION OF OMBUDSMAN'S JURISDICTION
(continued)

Madam Chairman: Good morning. I would like to call this meeting to order. This is the standing committee on the Ombudsman. We are dealing with the issue of expanded jurisdiction for the Ombudsman. This morning we are dealing with the area of public hospitals.

We have before us today from the Ministry of Health Mr. David Corder, acting assistant deputy minister, institutional health. With him is Mr. Gilbert Sharpe, who is the director of legal services, ministry of health. Here, helping us from the Ombudsman's office, is Eleanor Meslin, executive director of the Office of the Ombudsman and Michael Zacks, legal counsel.

Are there any opening questions or remarks from the committee before we commence? None?

Mr. Corder has indicated that he really does not have a formal opening statement. I just wanted to see if there were any remarks you wanted to make before we pose some questions on this area.

Mr. Corder: I think I would ask Gilbert Sharpe to explain the legal structure of how the hospitals are set up in Ontario and indicate how they are independent from government.

I would also like to spend some time later on in the question period to discuss some of the initiatives that are under way right now in the area of advocacy and patients' rights advisors and all those kinds of initiatives that do affect the general hospitals. So I would ask Gilbert to explain the legal structure first.

Mr. Sharpe: Perhaps what I could do is just give a bit of an overview of some of the legislation that applies. The Public Hospitals Act is the main structure, of course, for hospitals. It provides for the establishment of boards that govern the management operation and use of the hospitals.

The board structure is set up in such a fashion that hospitals are at arm's length from the government. I should distinguish because having read both the most recent annual report of the office of the Ombudsman and this particular matter that is before you, I see that there is a great focus on psychiatric patients.

It may be helpful if I distinguish between the kinds of facilities that psychiatric patients can enter. There are mental hospitals under the Mental Hospitals Act. There are 10 of those in the province. The Queen Street Mental Health Centre is an example here in Toronto.

They are owned and operated by the crown. They are direct operations.

The employees of those hospitals are public servants. That is to be distinguished from public hospital psychiatric units, which are, as I indicated, part of the public hospital structure operating under the Public Hospitals Act through boards independent of government. There some of the staff would be direct employees of the board.

The physicians, by and large, would be independent. They would be on the medical staff, but they would be operating independently of the hospital structure. Most, if not all—David, you can correct me if I am wrong—of the physicians and psychiatrists working in the mental hospitals are public servants, either employees, contract employees or full-time civil servants and so on. There are a few special kinds of hospitals like the Clarke Institute of Psychiatry operating under the Ontario Mental Health Foundation Act. It is also listed under the Public Hospitals Act. There are the Royal Ottawa Hospital and the Homewood Sanitarium.

There are several specialized facilities that have their own corporate structures, but they also have special designations in the regulations under the Public Hospitals Act. Over all of these facilities is the Mental Health Act dealing, as it does, with the rights of individuals, the power of the state to impose confinement under certain defined criteria, and the power, in some cases, to impose certain kinds of treatments.

It establishes both rights and responsibilities. The operative section for the purpose, perhaps, of committee discussion this morning, would be section 30a of the Mental Health Act. That is the section that deals with various rights and notice provisions that must be given both to the patient and to the area director of legal aid whenever certain rights are purported to be removed from patients.

For example, subsection 30a(1a) speaks of a doctor completing a certificate of involuntary admission and giving notice to the patient who is the subject of the certificate and the area director of legal aid. So if a patient is committed beyond that initial confinement period so that an involuntary form is filled out, there has to be a notification of rights to both the patient and to someone external—the area director of legal aid.

Similarly, subclause 30a(1a) speaks of a doctor determining that a patient is not mentally competent to make decisions about his or her person in relation to treatment or estate matters, release of information and so on. Again, the same kinds of notice provisions must be applied. There are several other examples of this. I will not go into detail unless you would like to hear more about this.

The point of this is that there is currently a mechanism for all psychiatric patients in the province, no matter where they are found, whether they are mental or public hospitals and so on, for notification of someone external to the hospital.

There is no scheme laid down in the Mental Health Act as to what then happens, although the ministry, in the person of David Corder, in his role as assistant deputy minister, mental health for several years, was instrumental in establishing a mechanism whereby rights advisers, in the case of public hospitals, would by and large be lawyers who are on a register with legal aid as specializing in mental health law and would visit the patient whenever they got a notice, and then they would explain to a patient what his rights are. If the patient wanted to assert his legal rights, then the usual process of qualifying for legal aid certificates would be triggered.

In the 10 government mental hospitals, this rights advice usually is given by the patient advocate program. As David said, if you would like to hear more about that we could get into that later on, although I realize the focus is more on the public hospitals than what goes on in our own mental hospitals.

I raise the Mental Health Act structure as assuming all psychiatric institutions, including public hospitals, only to point out that there is an existing mechanism for external, independent, objective notification when rights are removed or presumed to be removed, so that there would be someone who could come and speak to the patient independent of hospital staff. This is separate from programs in some of the hospitals where they do have patient representatives.

Perhaps as we get on in the morning's discussion, there would be an opportunity to discuss some of the initiatives and studies that have been commissioned by the government on the whole question of how patients should be represented, actually how disadvantaged individuals and handicapped individuals should best be represented, but that is a very brief overview of the legal structure.

Mr. Chairman: Mr. Corder, any further comments at this time?

Mr. Corder: Not at this time.

Mr. Tatham: I was just wondering, just very briefly on this matter of mental health, would an Ombudsman have to have on staff qualified doctors to be able to interpret the rights of patients? Is that necessary?

Mr. Sharpe: I think that should probably be best answered by the Ombudsman staff, but I know that their office is very active in investigating complaints from psychiatric patients in the 10 government mental hospitals. I do not know what medical backup or resources they have available to them.

Mrs. Meslin: As Mr. Sharpe said, we have, we think, successfully carried on investigations where we have jurisdiction, and that is in the psychiatric hospitals themselves, and have had no difficulty at all in handling those issues. I do not foresee any additional difficulty in that particular area if we were to expand to hospitals. Certainly, as we said yesterday, if we need any additional expertise, we are prepared to bring it in or hire it. We do have on staff a number of former nurses and psychiatric nurses. Our staff is a cross-section of highly capable people.

Mr. Tatham: How many psychiatric patients are in public hospitals and how many are in the government hospitals?

Mr. Zacks: I was going to go through this tomorrow, but I can give you an example. In 1986-87, there were a little fewer than 11,000 admissions to provincial psychiatric hospitals and to the psychiatric units in public hospitals a little more than 36,200 admissions. The ratio is about one to four.

Mr. Tatham: May I ask whether it is for the same length of duration, the same time period?

Mr. Zacks: No. Durations are much longer in provincial psychiatric facilities. They are about 130 days versus 30 days for the public psychiatric units, approximately.

Mr. Tatham: So there would actually be fewer people to deal with, in a sense, as far as—

Mr. Zacks: Fewer people would be there longer.

Mr. Tatham: The number of days times the number of patients in the provincial setup is longer than the other way around?

1020

Mr. Zacks: Yes.

Mr. Tatham: I see. OK, thank you.

Madam Chairman: I know the committee is at a disadvantage because the Ombudsman's office will not be giving us a briefing until tomorrow on this particular area and where they see their jurisdiction going. But the Ministry of Health is here only for this morning, so perhaps we can try to confine it there. But if in desperation you need to ask the Ombudsman these questions—

Mr. Zacks: If you like, we could generally go over where we see our jurisdiction going. I do not think it would take very long.

Madam Chairman: How long is "not very long"?

Mr. Tatham: That might be helpful.

Mr. Zacks: I will not go into the statistics, but I will just indicate generally.

Madam Chairman: How long is "not very long"? The only concern I have is that—

Mr. Zacks: We can do it in a few minutes.

Madam Chairman: If you could do that, I think it might be of assistance to the members of the committee; but keep in mind that for every minute you are using, we are not hearing from the ministry, who are with us this morning.

Mr. Zacks: Feel free to interrupt me whenever you like and ask me to stop.

Basically, we currently investigate complaints from the 10 provincial psychiatric facilities throughout the province, and those facilities deal with psychiatric patients. We investigate complaints now involving not the medical decisions that are made by psychiatrists but the administrative decisions, procedures in handling those patients. Decisions taken over the control of violent outbursts and the use of excessive force are examples.

In the public hospitals the Ombudsman makes initially a comparison between the psychiatric units of public hospitals and sees essentially a very similar class of individuals being cared for in public hospital psychiatric units as we currently investigate in the provincial area. We would be doing exactly the same kind of investigations in the public hospitals where the psychiatric units are.

In the rest of the hospital we would again not be dealing with medical

decisions, professional decisions by health care givers, such as doctors and nurses. Those types of professional and medical decisions are dealt with by the colleges that regulate those professions, and there are existing appeals to the Health Disciplines Board for that.

Where we anticipate the complaints coming from would be primarily patient complaints about the type of care, the administrative care given to them, the type of facilities they have, the accommodations, somewhat analogous to the multitude of complaints we currently get from inmates in correctional facilities but of a very different nature.

We would also perhaps get complaints from professionals, such as doctors and perhaps nurses, about the hospital. That is not uncommon. We get that now from professionals in psychiatric facilities that we do investigate. We would also anticipate getting a relatively small number of complaints from other employees about employment-related complaints, and I say "small" because my understanding is that a large percentage of the employees in public hospitals are organized or unionized, and they would normally be using the existing grievance mechanism. If they do not, we would obviously refer them to that, as we currently do with employment-related complaints that we currently get from the government.

In a nutshell, that is essentially where we see our jurisdiction being. There are very few appeal procedures available in public hospitals that would be analogous to what you heard yesterday about the multitude of appeal mechanisms and review procedures with children's aid societies. They do not really exist. There is no complaint mechanism for patients, except that some hospitals may have an administrative ombudsman person who would be reporting to an administrator to the hospital board, and they would be dealt with internally to some extent. But there is no impartial, independent review process.

Mrs. Meslin: I would also like to add that our experience in psychiatric hospitals with patient advocates—and I think Mr. Corder referred to patient advocates—has been an excellent one where we work with them. They are the front-line people who handle the day-to-day problems and very often refer the more complex ones to us, and vice versa. If we get requests from patients or complaints from patients that we think would be better done by the patient advocate, we refer them to the patient advocates. It seems to work as a very good ongoing unit to assist complainants in the psychiatric hospitals, in our experience.

Mr. Bell: Can I just complete the shopping list we started a couple of days ago on what areas of the practice of health discipline you are not seeking and will not have jurisdiction over. We talked last time about how you will not have jurisdiction over matters relating to the practice of medicine, nursing and dentistry, to the extent that it is practised in hospitals.

Mrs. Meslin: And to the extent that the procedure does not end up at the Health Disciplines Board.

Mr. Bell: It is a given that you are not directly investigating the practice, that you are investigating what the Health Disciplines Board did or did not.

Mrs. Meslin: Yes.

Mr. Bell: Hospitals also have pharmacists and they are usually on

staff, as opposed to many physicians. I take it you are not seeking jurisdiction over the practice of pharmacy.

Mr. Zacks: No, they would all go to the Health Disciplines Board.

Mr. Bell: Or to the extent there is any other health discipline practice?

Mrs. Meslin: Professional.

Mr. Bell: Like chiropodist, optometrist, or anything else we cannot think of.

Mr. Zacks: That is correct. They would all go to their own regulatory body.

Mr. Bell: Again, it does not make a difference just because that individual happens to be employed on the staff of the hospital as opposed to private practice.

Mr. Zacks: No difference.

Mrs. Meslin: That is right, as long as the issue we are talking about is a medical one.

Mr. Bell: If a doctor in a bad mood came out of the operating room and kicked a patient who was not his, that is probably not medicine, but I sure think the College of Physicians and Surgeons of Ontario would be involved. Where do you put that one?

Mr. Zacks: The areas of professional misconduct would go to the colleges.

Mr. Philip: We would have the Criminal Injuries Compensation Board before us and everybody in the world then would know who the client was.

Mr. Bell: That is right. So in addition to what is defined as the practice of health discipline under the governing legislation, there would also be matters of professional misconduct as within the jurisdiction of the particular self-governing body.

Mr. Zacks: That is right.

Mr. Philip: Maybe you can help me with my reasoning. If I am wrong from your point of view, please comment on it. It seems to me that the role of the Ombudsman is the human rights equivalent of the Provincial Auditor's role, who upholds taxpayers' rights in government. If you look at the literature in the field of the Ombudsman and Public Accounts at the moment, you see a great concern over transfer payments. Indeed, our Provincial Auditor has taken on himself, with the encouragement of the committee, the examination of certain transfer payments. In particular, he has started to do auditing of universities.

More recently, the standing committee on public accounts completed a fairly extensive report, which you will be aware of, on mental health services. If you look at that report, the Provincial Auditor actually dealt with value for money, which also deals with quality, because you are talking about how much you are paying and whether you are getting the quality, and

dealt with such things as even private care, if you think of the homes for special care and boarding houses as being private care.

Admitting, from your original statement that these public hospitals are independent and have independent boards—and I sit on one of those boards at one of those hospitals by virtue of my office, not because a whole bunch of people decided to elect me to the board but because the MPP in that area always sits on the board—can you give me a rationale why the auditor should be able to take care of the taxpayers' interests where transfer payments are made, yet when it comes to the human rights side the Ombudsman, who is his equivalent on human rights, should not have that same kind of right in those institutions where there are transfer payments, and in the case of hospitals, very large transfer payments?

1030

Mr. Corder: In the area of rights, I do not think that is the only role the Ombudsman plays. However, in the area of rights in hospitals, there are several mechanisms that exist—Mr. Sharpe explained one of them—that we feel are objective in the area of psychiatric care at least. There has been no such mechanism dealing with the money per se and that is why I think the role of the Provincial Auditor is quite appropriate. I do not necessarily see the parallel you are trying to draw between the two—exclusively the role of the Ombudsman, as it relates to rights.

I am sure you are aware of the three government initiatives: Father Sean O'Sullivan's report dealing with advocacy rights in all institutions in Ontario, the Fram report dealing with guardianship, and the Manson report dealing with the evaluation of the psychiatric patient advocate program. The government is trying to deal with those three reports at this time. That is why I do not see the Ombudsman's jurisdiction as the only jurisdiction dealing with rights in the institutions you have identified.

Mr. Philip: The argument about advocates really does not impress me, because I think there are all kinds of advocates out there for various reasons. In any given year, I have over 4,000 cases in my riding office and parliamentary office, so I am an advocate on behalf of 4,000 people. Unless the evidence is overwhelming that the constituent is lying to me or just has no case, then I invariably try to take his position, assuming there are enough people on the other side to take the other position. There are legal aid clinics and all kinds of things.

I think the essential thing, when you get into rights, is whether or not there is an objective, scientific, information collection system on which anybody can make a decision as to whether or not somebody's rights have been removed or hurt.

I am on the board of a hospital that has proved over the years to be fairly open in information compared to most hospitals, both this administrator and the previous administration; I am not talking about provincial governments, I am talking about the administration of the hospital because the administrator did change some time ago.

I get complaints and I really have no way of investigating them. I do not have the ability to go in there, examine files and find out. Usually, the complainant is an elderly person who says the spouse is not being treated appropriately, or an elderly person who somehow feels he has been ignored or has received bad ambulance service or was put in a dangerous situation for

some reason or other.

I approach the administrator of the hospital and write down the details or I may take a sworn statement from the spouse or from the complainant himself. I get back a detailed reply. I have yet to receive a reply that said, "Yes, the hospital really goofed." Maybe we have a good hospital. Maybe for 12 or 13 I have had over a period of 13 years, the complainant was wrong, but I find it hard to believe that somewhere along the line somebody has not goofed somehow.

My problem then is that if I, as a member of the board of governors and as an MPP, do not feel satisfied I can show the claimant that an independent investigation has been done—not that the claimant is right and the hospital is wrong, but at least that there has been a fair, independent investigation, one that does not have a vested interest in protecting the hospital—then I feel a little uneasy and I say, "What mechanism can I find out there?"

Sometimes I can say to the claimant: "I have this information. Did you know about it?" He says: "No. My goodness, if I had known that; I guess the hospital was right in making that decision." But there are others that are judgement calls.

I guess the problem I have is that I go away with the uneasy feeling that the constituent is not happy and he would have been more happy if there had been an independent investigator, even if that investigator found against him. I am not happy because I am put between a rock and a hard place. I am on the board of governors. I want to make the hospital look good and I am happy an investigation did not show that somebody really mucked up terribly. But I am also there trying to promote the rights of my constituent.

I guess I would feel more comfortable if there were an independent investigator and I think it would protect the hospitals, when they are right, from hearsay that goes out into the community saying: "Boy, did they do a snow job on my MPP. They gave him this, this and this."

I also get complaints from staff who are not union, and they may be administrators, and I have to accept with my limited time that the administration gives me its version of what happened. I get complaints from people who are associated with the hospital, ambulance service people and things like that, and I really do not have the investigative tools or the ability to get in there and get that information.

I have not heard from you a definitive statement that, as a ministry, you are opposed to our extending the jurisdiction. What you have simply said is that, at least in the case of mental health patients at Etobicoke General or Toronto General, there are some mechanisms open to them. Do I take it that you are not, as a ministry, opposed to our granting extended jurisdiction and that you perhaps see some objective validity if there is an independent investigator, be it the Ombudsman or some other process?

Mr. Corder: I think I should clarify the Ministry of Health's position at this time. The Ministry of Health believes it is premature to make a decision on the expansion of the Ombudsman's role to this area, in light of these other initiatives that are under way; namely, the three reports I have mentioned, and also, Dr. Barkin and Dr. Hill have agreed to set up some committee or some mechanism where they can discuss some of the complexities of health issues. I understand from Dr. Barkin that he wishes to discuss this jurisdictional issue with Dr. Hill some time in September, so the Ministry of

Health's position at this time is that a decision on this issue to expand the jurisdictional role is premature. We are not taking a position yea or nay at this point in time.

Mr. Philip: Boards of hospitals are elected from the community, with the exception of people like myself who get an automatic appointment as long as they keep on getting elected to the Legislature, and usually I find the board of our own hospital to be pretty effective. Most of them are fairly competent businessmen. They know how to look at the ledger and they have been able to run a medical building fairly efficiently and things like that, and they devote a lot of time to it.

In other provinces, though, there has been a trend whereby certain interest groups—I am not passing judgement on whether they are right or wrong—have been able to load meetings and take over boards of hospitals. Then there becomes a dispute between those who think they should be on the board and those who got elected to the board and so forth.

I recognize that if a board were taken over or a hospital were put in trusteeship by the government, then the Ombudsman could in fact conduct an investigation. If by any chance in this province we start to have a heated dispute as to who the real board is, that kind of thing, am I right in saying the Ombudsman would not have power to investigate unless the government decided it was going to take one side or the other and then the side that was wrong—it seems to me that what is happening in British Columbia at the moment is not going to stay in British Columbia; it is going to spread. It may not spread to my hospital, but it may spread to some of the downtown hospitals or some of the more rural hospitals in certain parts of this province.

Mr. Corder: You are not suggesting BC is going to spread, are you?

Mr. Philip: It seems to me that what happens in the west tends to flow eventually east, the good and the bad. People in a democracy can do what they feel they have a right to do, and I am not questioning that, but there have been some major disputes the government has had to jump in on and did not know what to do with. Indeed, the cabinet was quite split in BC on a number of those.

I am just saying, in the light of that kind of thing, that it might be useful to have somebody who is not political, who would be able to resolve matters like that in a nonpartisan way. Do you have any comment on that? I am not encouraging the BC people to come out here to load meetings and things.

1040

Mr. Tatham: "Go west, young man," somebody said years ago.

Mr. Philip: If you go too far west now you can be quite unemployed. What is it? BC has nine per cent unemployment at the moment?

Madam Chairman: Do you have a reply to that, Mr. Corder?

Mr. Corder: I do not have a reply, but perhaps an observation. Some of the problems that the public sector, including hospitals, face in BC are really quite unique to the BC system, but when you talk about loading boards or specific issues like that, it has already happened in Ontario.

There have been issues in which there has been the annual meeting and

people have turned out and bought memberships, stacked the meeting and elected their own board, which is a duly constituted board. I do not see that given the legislative structure under which they operate, that could be challenged. But I do not think the BC philosophy is going to creep that quickly into Ontario. That would be my personal observation.

Mr. Sharpe: Following up on the most recent point Mr. Philip has made, if I could, as a point of clarification, actually it also follows along a question Mr. Bell asked the Ombudsman's staff as to how extensively they were seeking jurisdiction in public hospitals. I wonder whether, if jurisdiction were extended and a patient were to complain, for example, that the care he or she had been given in, say, the cardiac unit of the hospital was less than he or she might have received in the internal medicine unit, the Ombudsman could then go into the allocation of resources by the board in administration, how those decisions were made, comment on their propriety and delve into issues of that sort. Would that type of investigation be open to the Ombudsman's jurisdiction?

Madam Chairman: We have not had the benefit of the Office of the Ombudsman presenting before us where it saw its role. It is the committee's decision where expansion, if indeed it does go, goes in the process. Would you be able to answer that?

Mr. Zacks: The answer is yes.

Madam Chairman: Your answer is yes to that one?

Mr. Zacks: The answer is yes.

Mr. Philip: May I ask a follow-up question? If a group of employees, even if they were unionized, felt that certain decisions were being made in the hospital and that these decisions were detrimental to them as well as to the patients, but they were not covered directly under the collective bargaining agreement, do you see that the extended jurisdiction you have or that you are asking for would allow you to investigate that kind of problem?

Mrs. Meslin: I would think so. It would depend, of course, on the issue and on whether the individuals were personally affected. You are talking about a very fine line once you start talking about individuals with bargaining rights.

If you make a distinction between bargaining rights which have to do with the individual's employment and day-to-day administration, something that appears to be or is alleged to be incorrect in the administration, I would say on that side, yes.

Mr. Philip: Would you agree that there are a number of hospitals which are not unionized or indeed that in every hospital there are large groups of people, administration and so forth, who are not unionized and that those people presently, if they had a grievance, would have to resolve that in the courts, whereas under the jurisdiction you are asking for, they could at least have an investigation by the Ombudsman?

Mrs. Meslin: Yes, that is right.

Mr. Philip: I wonder if the Ministry of Health can tell us this: We recognize there is the whole labour relations and arbitration system for unionized workers. I do not know how many hospitals are unionized. For

example, would a majority of cleaning staff be unionized in the hospitals in this province or are there hospitals that do not have unionized cleaning staff?

Mr. Corder: I could get you the actual numbers of the unionized hospitals, but I think the nonunionized staffs are very, very small, under 10 hospitals.

Mr. Philip: So there are somewhere up to 10 or under 10 hospitals that are not unionized in terms of cleaning staff, that kind of support staff—kitchen workers.

Mr. Corder: I do know that there are some, under 10 hospitals that have not got total unionization.

Mr. Philip: There would be no hospital, would there, where the nurses would not be unionized?

Mr. Corder: I do not believe so.

Mr. Philip: There would be no hospital where the Ontario Nurses' Association or its equivalent would not be unionized. There would be some nursing homes and extended care facilities, but not hospitals.

Mr. Corder: I am talking just about hospitals.

Mr. Philip: The administrators certainly would not be unionized.

Mr. Corder: No.

Mr. Philip: So in up to 10 hospitals, nobody is unionized other than the nurses and nursing assistants, and in other hospitals, a percentage of the population of the workers is not unionized and therefore would not have the arbitration system in the case of work overload or other things that they may find difficult to resolve with management.

Mr. Corder: I would like to be able to provide you with accurate statistics on this unionization issue, rather than just speak off the top of my head. I will send you the actual accurate numbers.

Mr. Philip: I guess what I am leading up to is my last question. My problem is that I see some groups of people who are employees of hospitals that have certain processes that they can use, other than the courts, and others that do not. I see, in the case of mental health patients, patients in certain facilities, namely, the 10 Ontario crown hospitals, who have access to the Ombudsman and those who have very limited access in the other hospitals.

I guess it seems to me that you have created two types of people, both in terms of employees and patients. I wonder if that is something we, as a committee, really think is appropriate. In other words, if we are going to have a system of rights, then the rights should be for everyone and we should not fragment them for some and not for others.

Mr. Corder: In the area of the psychiatric patient, I think one has to understand that while we are not talking about two types of citizens, there are two types of psychiatry in practice. In the psychiatric hospitals, they tend to be chronic, very severe and of long-stay duration. In the general hospitals, they tend to be more acute and of short duration and not of the same difficulty. There are really two different kinds of populations, even

though people do not like to admit that. They actually do break out differently. Otherwise, you could not take care of 35,000 people in the number of beds that are in general hospitals. The length of stay is much shorter because the acuity of the illness is different.

As far as the rights are concerned, the rights advisers are in both general hospitals and in provincial psychiatric hospitals. There is an advocacy program in the provincial psychiatric hospital system. I think that since the advent of that program, you will see a drastic decline in the number of complaints that have been referred to the Ombudsman. Indeed, for the last year I looked at, I believe there were only 122.

I do think these advocacy initiatives have some impact and I realize there may be problems, including a semantic problem with the word "advocacy," but the psychiatric patient advocate, let me tell you, is a very potent patient rights force. They have changed that system in a way that has been very significant.

Mr. Philip: From the point of view of the hospital then, if you have somebody shooting a gun on behalf of the patient, maybe an independent investigation would actually protect the hospital as much as the patient.

Mr. Corder: That is certainly an argument.

Mr. Philip: That is an argument I would make.

The one last point—

Mr. Tatham: Second last one.

Mr. Philip: All right. I will come back later then.

1050

Mr. McLean: My first question is to the Ombudsman's staff. The number of complaints you have: would you classify a letter or a phone call from a psychiatric facility as a complaint?

Mrs. Meslin: We have the breakdown, as you know, when we talk about jurisdictional complaints as opposed to nonjurisdictional. A nonjurisdictional complaint can be a phone call, something not in writing that can be dealt with on the phone. A jurisdictional complaint involves one that has an investigation attached to it.

Mr. McLean: I am curious because I have two facilities in my riding. We have the Penetanguishene Mental Health Centre and Oak Ridge. I get several letters from the residents there and I have taken it upon myself to investigate some of those complaints. I went there and I met with a psychiatrist, an administrator and a shop steward, and I have toured the facility with some of the residents. It is interesting to note some of the complaints you get. One person writes 50 letters a week to people, every week, then he gets his friends to write letters.

After the tour of the facility, I found that the complaints they had were not warranted, through my investigations with all the people involved, the shop steward and the staff. When you indicate in your report that you would need seven new investigators, what they are going to do certainly concerns me. Are they going to investigate those types of complaints I have got?

I had a letter two weeks ago from a guy who admitted he had killed somebody, but he thought his rights were now being jeopardized because his family was suffering because he was in prison. I do not know whether you classify that as a complaint. I do not think it needs a lot of investigation, in my estimation.

I have also found that the advocates at these facilities are really patient advocates. They are surely not administrative advocates, from what I have seen take place. Over the last four or five years, in my estimation, they have really picked on patients' rights and helped the residents immensely. When I read the Ombudsman's recommendations of what he is looking at, I have a concern, really, of where he is going to pick up on the complaint and how he is going to investigate.

I want to ask the ministry people this. I was about five minutes late today, so I may have missed it. Are you not now in a process of reviewing several of your legislative procedures in the ministry? When do you expect those to be completed?

Mr. Corder: Certainly, regulation 865 under the Public Hospitals Act has been under active negotiation with the professional associations and the Ministry of Health. Indeed, we have just come to the conclusion of one phase of those discussions, so I anticipate there will be some revisions to that.

The other thing, of course, deals with some of the areas the Ontario Hospital Association has raised, namely, the role of the board of trustees, a more accurate definition of its responsibilities and some of the educational programs it should undertake. The involvement of nursing in the overall administrative decision-making processes that relate to money in the hospital setting, and things like that which are of major operational importance to the hospital, are under discussion with the OHA at this time. I anticipate there will be some changes to the regulations.

Mr. McLean: How soon?

Mr. Corder: I would expect within a couple of months.

Mr. McLean: That is all at this time. Thank you.

Mr. Tatham: Going back to what Mr. Sharpe commented about, if the Ombudsman were looking after a complaint of a patient who suggested you get better service in one area of the hospital than in another, does this take away the right of the board to decide what facilities should have money spent on them, or of the Ministry of Health to decide the hospital's allocation of dollars? I wonder, when we open a door like that, I mean, these things have to be investigated, but the overall scheme of things is quite a large picture.

Mr. Sharpe: When I raised the question, I did not necessarily mean to indicate a preference one way or the other. I am frankly not sure what the implications would be, but our approach to this point has been that hospitals are given a global budget and they decide on the prioritization of needs. In some cases, it is almost like a triage, where there are many departments that are in urgent need and they have to decide on priorities within their own hospital. The assumption is that they know best how to allocate the funds available to them and that certainly each department head, each physician running the different departments would make a pitch for his own particular needs and so on.

I wonder whether putting an external body like the Ombudsman's office into that process would add to the equation a dimension that could be fraught with great difficulties for the workers at the hospital, whether that type of watchdog mechanism over the way funds are allocated within hospitals would make life very difficult for the board and the administration in doing the best job it can in allocating funds. At the present time, if there is mismanagement, the government does have the authority to send in investigators and certainly, ultimately, take over the management of the hospital.

But the ministry, as I understand it, does not interfere in the day-to-day decision-making about how the funds it provides the hospitals are allocated within the hospital, and if we opened that door, I am just not frankly sure what the implications could be. I wonder whether perhaps this committee might give some thought to hearing from an organization such as the Ontario Hospital Association, now that the Ombudsman's staff have clarified the intent they would see their role as getting into these kinds of issues, whether a group like the hospital association should be asked for comment as to the likely impact of that.

Mr. Tatham: Thank you very much.

Madam Chairman: Just for your information, I understand the Ontario Hospital Association is presenting next week.

Mr. Philip: Just on that point, there is a member of the committee who had to leave today, but he was telling me yesterday that he went to a hospital and waited four hours for a tetanus shot, and finally a nurse came along and gave it. They eventually agreed with him that he had some medical expertise and perhaps it was reasonable for him for him to suggest that all he needed was a tetanus shot and that the nurse could give it.

Now, it seems to me that this kind of complaint, if it did go to the Ombudsman, might suggest that there are ways of organizing work that do not keep people occupying waiting rooms for four hours when somebody such as a registered nurse can do the work of a doctor in a simple thing such as my cutting my hand, my getting bitten by a dog or something like that. Somebody might argue that this kind of thing is a medical decision, but it seems to me that the efficiency of the hospital might also be improved by simply having that kind of investigation.

Mr. Corder: Perhaps I could comment on that. That example clearly demonstrates the complexities that confront you in dealing with this issue, because that really starts relating to the whole issue of scope of practice. It gets into the Health Disciplines Act and the scope of practice of the professions. These are very complex issues; they are not easily unravelled.

It also calls into question what kind of expertise the Ombudsman would need to have: time and motion people to see what is going on in the emergency department and someone to evaluate the scope of practice of the emergency staff in an individual hospital. You know, there is all this delegation of medical acts and the certificates of competence for certain kinds of health workers in hospitals. That would all need to be investigated in that kind of review of that situation. I am not taking a position one way or another; it is just complex.

Mr. Philip: My only comment is that if the Provincial Auditor can do it, so can the Ombudsman. If our Provincial Auditor can hire on contract the appropriate staff to turn out some of the reports that he has over the years,

or that Ken Dye has in Ottawa, then certainly the Ombudsman can hire those very same types of people.

1100

Mr. Pollock: I would just comment that as far as mental health is concerned, I have had far more complaints from the general public complaining that Mr. X or Mr. A is going to be released, and that he is not competent and that they fear for their lives and those sorts of things, than I have from people within institutions. I just wanted to put that on the record.

The question is, if the Ombudsman does extend or expand jurisdiction, does that give a person who has been waiting, say, for a hip replacement for an extended period of time any right to complain to the Ombudsman or no right at all?

Mrs. Meslin: We are talking right now about a patient in hospital complaining about an administrative something in hospital.

Mr. Pollock: In other words, if it was not done right in the hospital, that is where you would step in.

Mrs. Meslin: Besides which, whether it was done right in the hospital or not, that is still a medical decision and we still would not have anything to do with it at that stage.

Mr. Pollock: I see. OK; Thank you.

Mr. McLean: The Hucker report has been out for some time now. You are aware that there are a lot of facilities in the province that are getting old and need to be updated and replaced. I would like to know when the ministry is going to act on that and when you anticipate building some of the new facilities in Ontario that have been promised for years.

Mr. Corder: The Hucker report dealt with the program aspects of patient care at the Penetanguishene Mental Health Centre, Oak Ridge division. Indeed, the recreational complex is presently being looked at. I am also in the process of preparing a paper on the options as they relate to the redevelopment of that hospital because it also involves the federal corrections people. As you know, the Whitby Psychiatric Hospital is being redeveloped; that has been announced.

Mr. McLean: When is it going to be done?

Mr. Corder: Pardon?

Mr. McLean: You are working on a paper, but I want to know when the bricks and mortar are going to take place.

Mr. Corder: I am sorry. I do not know.

Madam Chairman: Thank you, Mr. McLean. Mr. Philip, I have put you back on the list because you have one further question.

Mr. Philip: I would love to have you back after we have our final briefing with the Ombudsman. We might like to follow the possibility of inviting them here at the time we are having our final briefing from the Ombudsman, because it suggests we are going to have more questions after that.

I realize you have very busy schedules, but Madam Chairman, if that is at all possible, it might be useful.

Madam Chairman: I think your suggestion is a good one. In addition, I think it would be advantageous, if such a meeting between Dr. Barkin and Dr. Hill is going to occur, to discuss this very issue in September. It would be worth while for us to hear the outcome of that as well. It is unfortunate that we will not get to the public hospitals and the Ombudsman's position on expanded jurisdiction until tomorrow. We were zesty in our questions on Monday.

Mr. Philip: You might also be interested in reading, and I do not have any vested interest in promoting the publication, an excellent publication turned out by the standing committee on public accounts that deals with conditions in mental health services. Members of the committee who are not also on the public accounts committee might like to read it.

Mr. Corder: I could also recommend that report. It is a very good one.

Mr. Elliot: In the testimony this morning, the ministry indicated that there are a number of initiatives coming forth with respect to advocacy in several areas. I have a question of the Ombudsman's office with respect to this, because this is at ministry level. If there is undue delay in this, is this an area of your responsibility, so that the committee could have some idea of what is transpiring in that whole area?

Mrs. Meslin: Are you asking if we have some jurisdiction?

Mr. Elliot: Do you monitor that kind of that activity so that if this committee asked you to check out the progress of that kind of thing, there is no undue delay? That is my concern.

Mrs. Meslin: No. I think the committee could check it out, but I do not know that we have the authority to do that.

Mr. Sharpe: If I could help perhaps clarify the status of those initiatives for the members, the three reports Mr. Corder referred to are the O'Sullivan report dealing with advocacy services; the Manson report that evaluates our psychiatric patient advocate program; and the so-called Fram report, a report on substitute decision-making, the process for finding whether people are not mentally competent, the status of the Mental Incompetency Act, which is a terribly outdated statute, and what the better methods might be for dealing with people who are mentally handicapped.

The government is about to embark on an formal, extensive consultation process with respect to those reports. The report most people have been waiting for, the Fram report, the guardianship report, should be released within the next little while. Then the agenda might be for six months of intensive consultation and then discussions on the formulation of government policy.

When Mr. Corder indicated that the ministry position is that it may perhaps be premature to look at one model as being better than another at this point, I think it was in the context that this process of consultation is about to begin. It may well be that at the end of that process it appears as if the Ombudsman's method of investigation is the preferable route to go, but it may also be the psychiatric patient advocate model, which has worked very well, as a number of the committee members commented this morning. The

conclusion might be that that should be expanded into the other institutions, into the other parts of public hospitals, so that nonpsychiatric patients could have access to onsite advocates and that it just might be premature to decide on what the better model should be.

I do not think at this point anyone is disagreeing that nonpsychiatric public hospital patients should have recourse to someone who can speak on their behalf and help investigate complaints and concerns with respect to the hospitals.

Mr. Elliot: Why I have a concern here is that I can see a mushrooming effect here from a cost point of view with an advocate in each hospital and a number of things that come to mind. From a cost point of view, that might be a lot more costly than what is being proposed here today. As a committee, we are going to have to look at that, because my concern is that I think every individual should have recourse if he feels he has been maligned in any way in society, but it has to be a realistic kind of thing.

I think of Mr. McLean's example of actually investigating and finding that this individual, partly because I think he has time on his hands, writes 50 letters to various people. That automatically translates into a very time-consuming kind of situation. At some point, somebody has to say: "Look, everybody is addressing the situation as best he can. As a government, we cannot expend any more funds in this area."

I think that is a very important consideration, because it seems from an individual rights point of view that we could get to a point where we go too far as a government in expending funds in that kind of situation. I think this is one of the considerations that I am toying with in my own mind, the advocacy as compared to the Ombudsman situation.

Mr. McLean: Just to follow up on that, I guess when you stop and figure all those letters to the Premier (Mr. Peterson), the ministers, the opposition leaders and everyone, the cost involved of replying and looking into the situation is horrendous on the taxpayer.

Mr. Campbell: But there are therapeutic effects.

Mr. Tatham: On OHIP.

Mr. Campbell: On the recipient and on the sender.

Mr. Bell: My sense is that a lot of these questions are premature, but I guess we will ask them anyway.

I take it that within the ministry there is very little, if any, form to the models for patient advocacy or any other form of review process of the inner workings of hospitals. Is that correct?

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Mr. Corder: Perhaps you could clarify your question a bit. I mean there is a definite form to the patient advocate program.

Mr. Bell: I guess I am referring specifically to the three reports that were just mentioned.

Mr. Corder: The three reports.

Mr. Bell: If you have not started your process of consultation I guess it is a given that within the ministry the form of the models is not there yet.

Mr. Corder: The O'Sullivan model is voluntary, educational model with a community thrust. The Fram, dealing with guardianship, is a much more intrusive kind of model, quite legalistic and fraught with difficulties in some of the sectors. The Manson initiative suggests that perhaps the patient advocate in the psychiatric hospitals should be expanded and indicates how it should be fine-tuned and that type of thing. There is no preconceived notion about models in the Ministry of Health. We have got them all.

Mr. Bell: Can you tell us, though, whatever models are or may be developed, will there be a component of ultimate public accountability through the Ministry of Health?

Mr. Corder: It depends on your definition of public accountability.

Mr. Bell: I thought you were going to say that.

Mr. Corder: I feel we have public accountability in the patient advocate program, but there are others who feel we have not. They feel because it is owned and operated by the Ministry of Health that somehow that is not objective and not independent.

Mr. Bell: I will adopt your definition then of public accountability as being someone who is employed by the Ministry of Health and in some way has access through the hierarchy of the Ministry of Health for assistance in getting results if the occasion requires it. Is that within your definition?

Mr. Corder: No, it is not. My definition is not limited to that, because if you take a look at those three reports, they suggested other ways of public accountability.

Mr. Bell: OK, but I think we are talking about the same thing.

Mr. Corder: There has to be some mechanism of being publicly accountable.

Mr. Bell: OK, and whatever the models that are developed in terms of the ministry's position, it is likely that there will be a component of public accountability.

Mr. Corder: Certainly, those three initiatives clearly indicate that is part of what they are recommending.

Mr. Bell: Right. Let's use the patient advocate as an example in a public hospital. It does not make a lot of sense to have a private patient advocate employed by the hospital and not give that advocate the ability to seek assistance through the ministry or through some other particular area of government, because it will be a self-defeating process.

Mr. Corder: That is another one of the complexities. If you take a look at an advocate in a public general hospital, the real independent public accountability to the community is through the board of trustees. It is not through the government of Ontario. We are not into the operation of that hospital. That hospital is operated by the board of trustees, which is accountable to the community it serves.

So there is going to have to be a different interpretation of public accountability in community X, and I do not think it is through the Ministry of Health. That is why I am being a little bit hesitant to agree to what you are saying in the context of public accountability. I think it is going to be different. In a nursing home, for instance, public accountability may be through the residents' council. I do not know if it is going to be through the Ministry of Health. The provincial psychiatric hospitals owned and operated by the government of Ontario are publicly accountable through the government of Ontario.

Mr. Bell: Where I am going with all this is that you have been talking in terms of alternatives, about any models that may be developed as one alternative versus the process of the Ombudsman as another. Understandably, you have not had the benefit of the discussion this week, but what has emerged, if I can give some summary of the Ombudsman's position, is that where there is a mechanism in place which has a component of government accountability—and I will put the ministry definition in that—and where that is a formal process, the Ombudsman will stand back and let that process be completed. In fact, he may be forced to stand back by virtue of his legislation and he will only become involved should, at the end of the process, the complainant still be dissatisfied, which has the tendency, I think, of eliminating about 99.9 per cent of the issues that we would ever get.

May I ask you to comment? Well, maybe you cannot; maybe you want to take it under advisement. If any of those models have government accountability as a component, what is wrong with giving the Ombudsman, either by current legislation or by some amendment, the ability to investigate a complainant's continued dissatisfaction?

Mr. Corder: Your advice is noted. It is not a bad item to consider.

Mr. Bell: Mr. Sharpe went right to the heart of it. I have been struggling with an example to get to the heart of what the Ombudsman is seeking. The Ombudsman in the boardroom, I think, really gets to the heart of it. It is not whether the toast is burned, the pyjamas are ragged or the towels are cold, because they are all symptoms of the board policy, and you have not taken a position yea or nay in that. We are likely to hear from the hospital association on that point, but in practice today, in your experience, do boards of public hospitals have difficulty separating the practice of a health discipline from the practice of running a hospital, if I have made myself clear?

Mr. Corder: Not in my experience. I think the boards of trustees of our public hospitals are very prestigious bodies and they do good jobs. As a personal observation, until the clarification here this morning, I did not realize either that that is really the nub of the issue, the Ombudsman getting into the boardroom. I think the Ontario Hospital Association should be aware of that so that it does address the issue when it comes before you. I have never discussed that context with them.

Mr. Bell: I agree with you. I think, through the clerk, we should arrange to forward them copies of the relevant transcript so that they can be briefed.

This is my last point, Madam Chairman. Before Dr. Barkin and Dr. Hill have their discussions, Dr. Barkin should have the benefit of the transcript as well, because one of the purposes of these committee hearings is to focus the issue. The issue is now focused and there is a lot that has been taken

out, and that may have been some source of Dr. Barkin's concern, on the complexity issue. I concur. I believe Dr. Barkin and Dr. Hill, after those discussions, should appear before the committee to clarify and bring up to date, if nothing else, if there an agreement to disagree, and the committee should be allowed to focus on that.

Madam Chairman: Any further questions from the committee? Seeing none, did you have any concluding remarks, Mr. Corder?

Mr. Corder: No, Madam Chairman, except just to thank you for the opportunity to express our views.

Madam Chairman: We will make sure that the Ontario Hospital Association is aware of this before it comes before us next week. The committee thanks you for coming before us. We will adjourn until two o'clock, at which time we will have individuals from the Patients' Rights Association coming to give us their briefing on expanded jurisdiction.

The committee recessed at 11:20 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN
EXPANSION OF OMBUDSMAN'S JURISDICTION
WEDNESDAY, AUGUST 17, 1988
Afternoon Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

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McLean, Allan K. (Simcoe East PC)
Pollock, Jim (Hastings-Peterborough PC)

Substitutions:

Campbell, Sterling (Sudbury L) for Mr. Lupusella
Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Mackenzie
Tatham, Charlie (Oxford L) for Mr. MacDonald

Clerk: Carrozza, Franco

Staff:

Wilson, Jennifer, Research Officer, Legislative Research Service

Witnesses:

From the Patients' Rights Association:

Beatty, Harry, Director
Steckle, Mary Margaret, Director

AFTERNOON SITTING

The committee resumed at 2:10 p.m. in room 151.

Madam Chairman: Before we start this afternoon, is there anything from the committee, any questions, matters outstanding?

We have before us today Harry Beatty and Mary Margaret Steckle. They are from the Patients' Rights Association and, I assume, will be dealing with the issue of public hospitals and the expanded jurisdiction of the Ombudsman in that area.

Do you have an opening statement you would like to make? I would like to leave some time for the committee to ask some questions.

PATIENTS' RIGHTS ASSOCIATION

Ms. Steckle: Maybe we could begin by saying that the Patients' Rights Association is a voluntary organization of approximately 300 to 350 members at last count which responds to complaints against the health care system in Ontario, although we are getting complaints from other provinces and directions around how to handle these complaints.

We were formed in 1973 informally, and then formally in 1974. Our board consists of 14 members with a mixture of lay people and health care workers. The membership is also composed of lay people and health care workers and, interestingly enough, we are getting more and more health care workers joining the Patients' Rights Association every year.

The reason we are here today is to try and enter into some kind of dialogue with you around our concerns about the expanded role of the Ombudsman into the area of public hospitals.

Madam Chairman: Do you have any particular issues about his role that are of concern to you? You can bring those forward now, and then the committee may have its own questions of you as well. If you do have specific concerns, we would appreciate it if you would direct your attention to those now, which would allow us to know where you are coming from on them.

Mr. Beatty: Perhaps I could outline a few of the points. As you indicate in your opening remarks, we are only going to comment on the proposal to expand the jurisdiction of the public hospitals and not take any position with regard to the other two areas. As a preliminary remark, we have not really seen any details of what the proposal is, so I think our response today is quite general in nature. We are going to touch on some issues. The proposal to expand the Ombudsman's jurisdiction to include public hospitals should be looked at seriously, but there are a number of points which would have to be considered.

I will start by giving our perspective on complaints in public hospitals, which begins on page 3 in our brief. We point out that there are many ways in which the Ontario Public Hospitals Act, and the way in which it is implemented, very much limits the protection given to patients' rights. There is legislation in Ontario, such as the Nursing Homes Act and the Child and Family Services Act, which contains bills of rights for people who are in facilities, but there is no bill of rights for patients in public hospitals. Moreover, many issues related to patients' rights are not dealt with in the

Public Hospitals Act. The act does not deal with consent or refusal in relation to treatment, directly with confidentiality of records, problems that may arise around admission and discharge and so on.

There are some provisions in the regulations which, I guess, relate to these issues, but they do not really deal with the issues directly. For example, the regulations under the act deal with what has to be in a consent form, but that is not really legislation dealing with consent itself, as the consent form, while important, is only evidence of whether a consent has been given. Again, we point out that other legislation in Ontario, such as the Mental Health Act, deals with these areas.

There is no complaints procedure in the Public Hospitals Act. The Health Disciplines Act, covering five health professions, has quite a detailed system. We have in the past been critical of this system, but at least there is an avenue there. If you have a complaint against a doctor, nurse or pharmacist, you know where to write and how it will be dealt with. If you are not satisfied with the complaint review, you do have your review at the Health Disciplines Board which, as you know, is a lay body. But under the Public Hospitals Act, there is really nothing in the legislation to say what you do with your complaint. You may write to the administrator. I think usually that is the suggestion that is given—I think our own pamphlet gives that suggestion—but there is no requirement that the administrator deal with your complaint in any particular way.

We have not found in the past that the Ministry of Health plays a very active role in investigating patient complaints. It may follow up but, again, there is really no system. There is no branch of the ministry you are told to call with your complaint about a hospital. If you are persistent and bring your complaint forward to the minister's office, or whatever, someone may look into it, but it is not really a system.

Also, there are no advocates in public hospitals, as there are in some other facilities. Some hospitals have taken the step of hiring a person they may call the patient representative or "ombudsman." "Ombudsman" is in quotes in our brief because it really is a hospital employee. That is a valuable step. We accept that for many problems that kind of person may make things better; it is somebody to go to. But if there really is a serious concern where an independent look at it is required, an employee of the hospital cannot do that, in our view.

We do not see the courts or civil litigation as dealing with very many complaints in public hospitals. There has been some talk about a malpractice crisis in Canada. In fact, we are represented on a national task force appointed by the deputy ministers of health which is looking into that. But if you look at how big the health care system is, really, the number of cases is very small. There are many reasons for this but primarily, I guess, many important rights violations or concerns do not give rise to a large financial loss or major permanent personal injury and it is not worth while going to court unless that is there.

Even if there is arguably some major problem, in a potential malpractice case the expense and delay of court proceedings will deter all but the most determined. A malpractice case, as you may know, is typically litigated very hard and may go through several levels of appeal and in some cases close to a decade before it is finally resolved, and at the end of the process in our system, of course, the patient or family may be left liable for all of the costs of the health facility or professional. So not many people sue.

As well, sometimes if services are given in the hospital and there is a problem, people can complain against the health professional, but that may not really be the most suitable way of proceeding, because there is a difference between the hospital and its procedures and what an individual health professional, such as a doctor or nurse, may do.

We do believe that there is need for more accountability of the public hospitals, that there is a need for an avenue for complaints, and that is why we think this proposal has to be considered seriously. At the same time, as Ms. Steckle indicated in her opening remarks, we have some concerns.

Before we turn to those, we put a list on page 5 of some of the types of complaints that have come in to us over the 14 years. It is not a very thorough list, but it gives you an idea of the kinds of complaints we believe would arise. I will not read through that list on pages 5 and 6, but you can see that the kinds of issues that could arise are very varied in nature and some of them are quite extraordinarily difficult.

By listing these problems, we are not saying by any means that there is only one side to this kind of problem. Take, for example, the visiting hours. We have seen some disputes between health facilities and particularly family around just when can you come and visit, or: "My child is in the hospital. Can I stay there 24 hours a day?" On the one side, you have the natural concern of the family member to be with his or her person who is in the hospital. On the other hand, there are some practical reasons why the hospital may not want folks coming in and out at all hours, not least among them, in a large facility, patient security and all the rest of it.

They are not easy issues, and I think in general we believe that expanding the Ombudsman's jurisdiction in this way is going to be a very major undertaking. If this committee is to recommend that expansion, it should be, in our view, together with a proposal to put more resources, particularly more staff, into the Ombudsman's office.

Starting on page 6, we go through a few of the issues we think will arise if the Ombudsman's jurisdiction is expanded, some of the pros and cons, if you like. We acknowledge that there is a considerable degree of expertise in the Ombudsman's office in dealing with complaints in a wide variety of settings. The Ombudsman's office would therefore, we believe, have an advantage in that respect over a new program.

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The Ombudsman is also increasingly throughout the province with regional and local offices, and in the area of patient complaints we think that is very important. In looking particularly at the College of Physicians and Surgeons of Ontario, which does complaints against doctors, we think it is very difficult for people who are often very upset, may not have very good language skills and so on, to have to deal with an office in Toronto. It essentially means that the person's contact with the office is all in writing. I know the college has, perhaps in a limited number of cases, invited people in or gone to see people, but it does not have the resources to do that generally throughout the province. So that capacity we think is important.

The Ombudsman does have experience in the policy area and is familiar with matters concerning the Ministry of Health, which is another important background. Coming to point 20 on page 7, there are many hospital issues that would involve both the hospital and the ministry. In our list of potential

problems, we pointed to something that has been in the newspapers as a consumer concern, and that is delays in the emergency ward.

People will say: "Go into the emergency ward. There is nobody there," or, "I had to wait a long time." It might be a question of whether that is a government problem or a hospital problem. A body like the Office of the Ombudsman which could look into both sides of it at least might be able to get to the truth of the matter or make more helpful recommendations than some other organization that could only look at the one side.

The Ombudsman, as we know, is not an advocacy organization but conducts an impartial investigation. That is good because we believe that independent investigation should be available of organizations such as public hospitals where there is public funding, particularly since the issues there are so important.

At the same time, you have to remember that if the Ombudsman's representatives are doing an impartial investigation, and on the one hand, you have a large and well-established facility like a hospital with all sorts of access to resources to present its case and on the other hand, the "little guy," you do as well have to address some kind of advocacy or some kind of mechanism to make sure that the individual complainant, whether it is a patient or a family member, is able to get his or her case forward.

We have already raised the concern that for the Ombudsman to get this jurisdiction, you would need more resources and perhaps a specialized kind of expertise that may not be present in the Ombudsman's office at present just because these issues are so difficult and so important.

We think there will be a lot of complaints. You have to remember, as we said earlier, that in other areas, the Ombudsman often seems to be dealing with a system in which there are other reviews and other routes of appeal. If there is not that kind of system in place, then the Ombudsman almost becomes the first resort. That may be a good or a bad thing, but I think it might lead to the Ombudsman having an awful lot of issues to deal with.

In the past, we have experienced delays in dealing with what we admit is a limited number of cases with the Ombudsman but we do continue to hear about that as a problem. It may be connected to the resources issue.

Finally, there are a few more detailed problems that may arise. One, pointed to in paragraph 27 on page 9, is the problem of divided jurisdiction. Maybe the example that is given there would help you to understand what we are trying to say.

Suppose a patient were to complain, to take an example, that procedures used for getting a consent at the hospital were not appropriate. That might be a complaint about what the doctor did, it might be a complaint about what the nurse did, but it also might involve the consent forms used. It might involve other administrative procedures at the hospital. We are concerned if we get a system whereby there are two or three investigations, or perhaps more, of the same incident; for example, if professional colleges and the Ombudsman are looking into it at the same time.

We are also concerned that an Ombudsman's investigation is really what you would call a confidential investigation. The investigator will talk to or receive submissions from both sides and look into it, but there is not really a hearing or anything in this process where the two parties get to hear, face

to face, what the other is saying. In many of these disputes, I think that is what a complainant would like.

The final point is that the Ombudsman can only recommend. We know the Ombudsman's recommendations have had some weight in changing procedures within government. We do not quite know in what way these recommendations would be communicated to public hospitals or what kinds of sanctions or pressures would be brought to bear were these recommendations not to be followed.

The final point on page 11 is that we have been taking part in the health professions legislation review in Ontario for about five years. As you are probably aware, that is a review of the entire Health Disciplines Act and legislation covering many other professions. We are concerned about the proliferation of colleges, if you like. I think there are going to be about 25 under the new proposal. We think it would be better to have a unified and independent health complaints commission that would look at health care complaints generally. We know that is not the kind of proposal you are dealing with, but to show where we stand, so to speak, we have attached our proposal as an appendix.

In outline, those are our major points. I will be happy to take questions.

Mr. McLean: Is there anywhere in the hospitals act for somebody to complain to the system? Is it in the regulations or anywhere? If I, as a patient, had a complaint against a hospital, where would I complain to? Just to the administrator of the hospital?

Mr. Beatty: It is not really covered in the legislation, I do not believe. That is the usual advice. That is the advice we would give, to write to the administrator.

Mr. McLean: But I do not see anything in the legislation. That is why I asked.

Mr. Beatty: No. We do not either.

Mr. McLean: Do you see your role continuing even if the Ombudsman were authorized to expand his jurisdiction to the public hospitals? I gather from your brief that you would like to be working in tandem with that office. It sounds to me you would like to have your Patients' Rights Association expanded too, with some jurisdiction.

Mr. Beatty: We are not really proposing that we necessarily be funded or expanded. It has always been an all-volunteer group. The reason it has been able to take part in a lot of activities is quite frankly because our president, Anne Coy, has worked on it full time, as if she were a full-time employee. She is quite well known as somebody people come to. But we are not really set up to look at issues throughout the province or whatever.

We do other things. We have a newsletter. Different people take part in educational events. We would like to continue those activities as an independent group, but I do not think we are really proposing that we be funded or ourselves expand into a series of offices or something.

Mr. McLean: Does the Ontario Medical Association approve of the work you do in the communities? Do they think you are doing a good job or would

they sooner you not be there? Are they saying: "Yes, there have been complaints. We are glad there is somebody they can complain to"?

Mr. Beatty: With the OMA and other professional groups, the college and the Ontario Hospital Association, there are very strong disagreements, but there has been an increased willingness, I would say, to invite us to, say, meetings to discuss and exchange ideas. There is no doubt that some of our proposals particularly restrict self-regulation of the health professions, and the OMA and the college are quite opposed, but there still is increasingly, I think, a willingness to talk.

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Mr. McLean: There is a major review now in the Ministry of Health itself. Have you been asked to participate, to make any briefs or recommendations to the review that is taking place?

Mr. Beatty: The health professions legislation review? Yes, we have been submitting briefs to that since 1983 and in a sense we will be happy to see the last request because it has been a lot of work. We have been at such meetings as there were and we have been given all their material and a chance to submit right from the beginning.

Mr. McLean: In your opinion, do you believe something is going to happen within a few months or is it going to be months or years? We have been told that, yes, there is going to be a position paper out within a couple of months. I would like to know if that may happen, or do you feel it may be several months before some recommendations are coming?

Mr. Beatty: I do not really feel in any position to answer. I am sorry.

Mr. McLean: The feedback you are getting from the ministry, then, is not indicating to you that it could be in the works fairly quickly.

Mr. Beatty: The last set of documents that came out from the health professions legislation review said: "This is the final thing and now it is going to the Legislature. When we get this final response back, it is going to the Legislature." I felt that the review director, Alan Schwartz, had indicated in his letter that they were at the end of the process and it was going to be put into the ministry's hands this fall, but that is just my interpretation of the letter. I do not have any more information than that.

Mr. Tatham: You have a proposal for the formation of a health complaints commission in Ontario. What kind of money are we talking about?

Mr. Beatty: I have to admit we have not costed that out at all. It is clear from our brief, though, that it is a pretty substantial office. If it were to deal with the whole range of things that might arise in a public hospital, I think you would be looking, on average, at sort of one or two staff per—this is just public hospitals. For the whole health system, you would be looking at a significant office. You would be looking at something on the order of the Ontario Human Rights Commission or what the Ombudsman is now if you were to give it that kind of broad jurisdiction.

Mr. Tatham: Are things that, shall we say, bad in the hospital situation that we need that?

Mr. Beatty: In terms of the whole hospital situation throughout Ontario, we do not really know how many complaints there are or how many problems are arising. It is very hard to sort of guess what would occur. When a major problem does arise, it tends to be very major. An example that might come to mind is the Grange commission. That was a very special situation, but with the effort and so on that had to go into resolving that problem, it was an awful lot of people.

Mr. Tatham: If we had this health complaints commission, that would not have happened?

Mr. Beatty: There would have been a group to go to that had some expertise and some background in investigating that kind of thing. That is what we would suggest. But that was a special situation where there were allegations of criminal conduct. It would have been very difficult anyway.

Mr. Tatham: Would an ombudsman have done the same kind of job?

Mr. Beatty: It depends what resources are there. It would be helpful, we believe, to have people with the knowledge of how you go about investigating something in a public hospital.

Mr. Tatham: If a patient has a problem and you address that problem, do you, in turn, go to the director or the administrator of the hospital and suggest that certain action should be taken?

Mr. Beatty: Yes.

Mr. Tatham: What success do you have?

Mr. Beatty: It depends very much on the individual. I mentioned Mrs. Coy, our president. Some concerns were brought to her about a major teaching hospital in Toronto. In that case, the administrator was extremely receptive. He set up meetings and took several steps to resolve it. But we really have no legislated mandate and they might just refuse to respond to our letters. It very much depends on the orientation or the attitude of the person in charge.

Mr. Tatham: Just one more question: you must feel you are doing something. You have no legislative right to see performance take place after your questions, but do you feel you have a reasonable amount of success?

Mr. Beatty: I think things have changed slowly, but there has been more willingness to listen to our perspective over the years. I know, for example, that at one time Mary Margaret Steckle and Anne Coy were invited by the hospital association to sit on a committee looking at problems that would arise in health care to seniors. In terms of opening up the dialogue with health professionals and getting people to consider these things, I think there has been progress. In terms of putting something in place where people can really feel their individual concerns have been dealt with, much less has been accomplished. We are simply too small to do more than talk to people and give what summary advice we can.

Mr. Philip: Thank you for a very interesting brief. It is most helpful. On your suggestion of a special commission, I am sure you are aware that one of the arguments that has been made in other jurisdictions is that when you start duplicating ombudsmen for different functions, often the public

is confused and does not know where to shop, and that there are certain advantages to having an ombudsman.

We have seen this with the federal government where they have a language rights commissioner, a commissioner for the military, a commissioner for this and a commissioner for that, but no ombudsman. It has created considerable confusion, whereas in some countries they have preferred to have one ombudsman with specialty offices so that you can come in the door and end up being directed to the appropriate division, if you want, of the main ombudsman.

That is not in any way being critical of your proposal. I am not ruling it out as a possibility.

One of the interesting things you point out is on page 3. Until now, we have been looking at what appears to be a difference. If you happen to be covered under the Mental Health Act in an institution that is under the Mental Health Act, you have more recourse to appeal or to have your complaints heard than if you happen to end up in a psychiatric ward of a general hospital.

An interesting point you make is point 7, namely, the Nursing Homes Act. In more and more hospitals now, we are having the same kind of people who would normally be in chronic care facilities or nursing homes occupying active treatment beds. At the Etobicoke General Hospital, the waiting list now to get into any kind of extended care facility and so forth is running at around two years. I understand some hospitals are worse than that. So you have another type of patient in active treatment hospitals, usually the elderly or those in some way disabled by stroke or other ailment, and they do not have the same kinds of rights of appeal as those who would be under the Nursing Homes Act.

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The question we have been looking at, not just with this but also with regard to other acts which do have an appeal mechanism, whether it is through the home warranty program or children's aid, is the ability to get information. My question to you is, as an advocate, do you have trouble accessing information on which to build your case or to present your points?

Mr. Beatty: In the public hospital setting, I guess the starting point is that you do not have a right of access to your file. There is some variance among hospitals, it appears to us, as to what their policy might be. There are some hospitals where there is a procedure set up to let people look at their files and others in which it is really only in cases that look as if they are going to be litigated. You get a lawyer and then people will say: "Well, you can look at the file now," or, "Your lawyer can have access."

Certainly, not getting access to information is one of the areas of patient complaint, not just to us, but before the college and before the Health Disciplines Board too.

Mr. Philip: Would you agree that the Ombudsman, if he were to be given this extended jurisdiction, would by virtue of his statute have access to information which you as an unofficial group out there, a group with no right by statute, cannot obtain, at least from some hospitals?

Mr. Beatty: Yes. I think if the Ombudsman had a legislated jurisdiction, it would be easier for to get access. At the same time, we have been involved in the confidentiality and access issue since the Krever

commission, where we submitted a brief and were involved otherwise. We believe the patient's right, generally, to see records should be expanded.

Mr. Philip: What I hear you saying is that there are considerable inconsistencies or variances from one institution to another.

Mr. Beatty: Yes.

Mr. Philip: One of the advantages I think has happened with Karl Friedmann as the Ombudsman of British Columbia and Dan Hill as the Ombudsman in Ontario—I could go on and name some other ombudsmen in different parts of the world—is the value of coming up with administrative principles or identifying systemic problems which can create administrative changes not just in the individual case, but in several other cases where the same mistake may be repeated.

Do you feel that the extended jurisdiction of this Ombudsman might result in greater uniformity in terms of the human rights of the patients so they could more likely be expected to be treated by sound administrative principles across the province rather than have this variance from one institution to another?

Mr. Beatty: Yes, I believe it could play a role. I understand that is what the Ombudsman's role has been in other areas. We are seeing this issue again and again. Maybe it is time it is addressed.

Mr. Philip: I want to ask a question about some of the examples, particularly example (c). One of the things that is coming out more and more now—and each of us is struggling with this and I guess as each of us gets older, maybe it becomes a more important problem to us—is the right of a person to decide to die if he so chooses.

I do not mean the right to commit suicide but the right to say, "According to my conscience, and in consultation with my family or my confessors or whomever else, I feel I do not want any further actions taken that will prolong my life artificially."

I had a friend who had that happen. After talking to his priest and his family and so forth, he made that decision without any problems. But I understand that some people who have had that right, the right to not prolong through mechanical means, if you want, have been coerced or had that right interfered with. Is that your experience and would that be the kind of case in which perhaps the Ombudsman might be involved in what is an ethical question?

Would it be useful then that the Ombudsman might in fact be able to, in consultation with the hospital chaplains and other people who are concerned about this issue, perhaps develop some principles on the person's right—not to commit suicide artificially or take poison or whatever else—but to at least say: "Turn off the kidney machine. I no longer wish to go ahead with it."

Mr. Beatty: That is an extremely difficult problem. I will not pretend that we have the answer to that.

Mr. Philip: It is very hard on the family as well.

Mr. Beatty: Yes. In principle, I think we as an association support the right of a competent person to make that kind of decision, but how do you actually implement that? I think you understand it would have to be done very,

very carefully. How do you really determine if that is the person's wish?

Mr. Philip: Maybe if he says so.

Mr. Beatty: Yes, but often the person, by the time the decision comes, is unconscious or in a lot of pain or whatever. Those are the kinds of things, were the Ombudsman's jurisdiction to be expanded, that would be brought for sure because there is a lot of public concern about this. A lot of people are concerned about it individually, health professionals as well as patients.

I think our main point is that thought will have to be given as to how you get something in place in the Office of the Ombudsman office that would respond appropriately to that. Mary Margaret, do you have anything to add?

Ms. Steckle: Part of your question was, "Has this been part of your experience in terms of people lodging complaints about this?" Yes, we have had complaints lodged about this. In fact, there is another community organization that has developed around this issue. As a health care professional myself, I have seen these things happen.

I think there is a need for the issues to be addressed at a public level. Part of the problem I would have with the Office of the Ombudsman dealing with an issue like this is the timing, because when you have an individual who is acknowledging a terminal illness, very often there is not much time. If the Office of the Ombudsman cannot deal with these issues very quickly, then we would be looking at a situation after the fact.

Mr. Philip: One case might decide the rest of them, would it not?

Ms. Steckle: I think there are so many complicated issues that come into play in a hospital situation. It depends on the physician. It depends on the nursing staff which is caring for the patient. It depends on the family, not just the patient's wishes. There is a multiplicity of factors that comes into play. It is not simple.

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Mr. Philip: I have one last question. I am trying to get an idea of the kinds of complaints you think might be usefully examined by an Ombudsman. I can remember Sheila Copps, who is a federal member of Parliament now and who used to be a provincial member, telling me a very dramatic story about her father, who had a stroke, and seeing the lack of privacy he was experiencing. Here was the mayor, who was obviously in a situation the family did not like, and people were coming to view the mayor in his state. This was very emotionally upsetting to her, and needless to say, it did not happen for very long. Anything Sheila does not like does not happen for very long without her taking very strong action against it.

It struck me as the kind of thing at least that an Ombudsman can do something about, if there is insensitivity to a person's privacy. Just because he is old or has had a stroke does not mean he should be treated any less modestly or have any less privacy than someone who may have all of his facilities and all of his brain operating perfectly. Have you had complaints about that kind of thing? Is that the kind of thing an Ombudsman could look at, that perhaps institutions become sloppy with things like that?

Mr. Beatty: Sometimes that arises with regard to students. People

may be in a teaching hospital and may feel sort of uncomfortable with students coming in. Again, it is not just one-sided, because students have to learn—we recognize that—but sometimes people will express concerns about that. It is the kind of complaint we get. The student is there to learn.

Mr. Philip: Knowing the training the students get and the observation of them by their teachers, probably they are more sensitive, at least at that time in their career, than somebody might be 20 years down the road, but I understand the point you are making.

Mr. Pollock: I would like to know if your organization would be in favour of letting a patient pay for an operation if his job depends on it.

Mr. Beatty: I am afraid I do not understand. Could you perhaps expand on your example?

Mr. Pollock: I was thinking of a situation where a person worked at, say, a golf course. Needless to say, once the golfing season is over, it is November, and if he wanted to have an operation then, possibly he would not get it scheduled then. If it were not scheduled until, say, June or May or April of the next year, then his job would certainly depend on that, if he wanted an operation on his legs, because if his legs were in poor shape and he wanted to get them fixed, the knees for instance, then that person is pretty well going to have to have that operation in November, so that he would be prepared and ready to go back on the job when the golfing season opens again. If he were not, well then, let's face it, his job would be over with, because the people who operate that golf course would have to hire somebody else.

Mr. Beatty: You are suggesting that the person would pay something and then get scheduled ahead of a person who was not willing to pay?

Mr. Pollock: Well, pay for the operation, period. As far as I am concerned, that is what I am coming at. Would your organization be totally opposed to that or in favour of that?

Mr. Beatty: We believe in universal access without extra billing of that type, as has been put into law in Ontario. If I understand your suggestion, we would be opposed to it.

Mr. Pollock: In other words, this fellow would have to go through the proper channels, even though his job might be on the line?

Mr. Beatty: I am sure everyone who needs an operation feels there is some important reason why he should have it. A job is important, but so is a homemaker looking after a family or whatever anyone else has to do.

It is a difficult problem, the waiting period and so on.

Mr. Pollock: But you can understand my scenario of the situation where there would be no problem if he had his operation slam bang in November and then was ready to go back to work possibly in May, because it is my understanding that an operation on one's legs or knees takes a considerable length of time and it takes some time to get them mobile again. I take it that you are saying you would be opposed to that.

Mr. Beatty: I think we would be opposed to serving people first who could pay and putting people second because they could not.

Mr. Pollock: I would think that a person working at a golf course is not in the high-income bracket. In other words, if he were really serious about keeping his job, then his only recourse would have to be possibly to go to the United States for the operation.

Mr. Campbell: Just to refresh my memory on this, you are strictly a volunteer group and you are voluntary directors, I take it. Both of you receive no remuneration for your activities?

Mr. Beatty: No. We both work elsewhere, perhaps in related areas, but through this association we do not get paid.

Mr. Campbell: I tried to find in both of the papers you presented to us today an idea of your membership composition. Do you have numbers on your membership size?

Ms. Steckle: Yes. I explained earlier that we have approximately 350 members at the last count. There are many people who call or write to us and want our information, but we do not necessarily consider them to be members. Members pay a membership fee.

Mr. Campbell: To keep you in print costs and that kind of thing.

Ms. Steckle: Yes.

Mr. Campbell: Your membership would be in both categories that you mentioned: your hard membership, the dues-paying membership, and the others from whom you receive phone calls.

Ms. Steckle: And letters.

Mr. Campbell: Do you have an idea how they are dispersed geographically across the province?

Ms. Steckle: Probably Anne Coy would be best to answer that kind of question, but to the best of my knowledge, we get calls and letters from all over the province.

Mr. Campbell: Equally?

Ms. Steckle: I would not say equally, no. I think that people who are closer to the Toronto area are probably more aware of our existence, but we are getting an increasing number of calls and letters from northern Ontario.

Mr. Beatty: There is also an affiliated group in Welland.

Mr. Campbell: Your basic dues-paying membership is 350 across the province, but more likely in Toronto?

Ms. Steckle: Yes.

Mr. Campbell: Your point 9 on page 3 intrigued me. The usual suggestion is to write to the administrator of the hospital; there is no requirement and so on and so on. What involvement do you get with the board of directors as individuals when you make complaints?

Mr. Beatty: I think our experience is usually none. We could perhaps consider that route, but generally our understanding is that the board of

directors is not involved in the day-to-day operation of the hospital and would not be in a position to get involved in an individual concern or complaint.

Ms. Steckle: Only recently, Anne was involved with lodging a complaint about the patient representative in a hospital, and instead of writing to the administrator, which is what she usually does, she in fact wrote to the board of directors and the response that she got was from the administrator.

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Mr. Campbell: I can just say that in my experience in a somewhat smaller community than Toronto, the board of directors is very active in the hospital, not in the day-to-day operation, I do not think that is their role, but certainly in making sure the hospital is doing right by its patients. Maybe that reflects the fact that your membership is largely in Toronto where the service may not be as personal as it is in smaller communities. However, I just wanted to clarify that.

I guess my concern is in the types of complaints you have identified on page 5. When you are looking at a number of these issues, and I would like to ask a couple of them because I wonder how you get your expertise. You have mentioned that you are a health professional and I do not know if your colleague is a health professional, but in part D, for example, how would you make the judgement call that the patient was moved unnecessarily within the hospital for tests while in a critical medical condition? Being not present in the circumstances but after the fact, how would you be able to judge or the family be able to judge whether or not that is a fact?

Ms. Steckle: In fact, this was a complaint brought to our attention by a registered nurse who had been taking care of this particular patient.

Mr. Campbell: I see. Who would make that decision, the administration, a doctor or a combination of health professionals?

Ms. Steckle: I think the decision to have the test would be made by the physician. The fact that where the tests are done may be on a different floor, away from the patient area, where patients have their beds.

Mr. Campbell: Yes.

Ms. Steckle: If portable equipment is not available to bring to the patient, then the patient must go to the particular area. Sometimes patients in critical conditions are moved to have tests. This does not mean intensive care unit patients or cardiac care unit patients.

Mr. Campbell: I would hope not. That would have been a supplementary.

Ms. Steckle: People who are on oxygen or people with tracheotomies, if they are moved, for example, to radiology and happen to aspirate, there is no suction equipment available, or if they happen to arrest, there is no cardiopulmonary equipment available because they are in a relatively unstable medical condition.

Mr. Campbell: Part F, professional competence. Is that whole field

of expertise not covered by our civil litigation process, or litigation process in any event?

Mr. Beatty: I do not really think civil litigation gets to too many concerns just because not very many concerns are litigated. If you want to go through that route, you are looking at several years and the investment of an awful lot of money.

Essentially, we believe there may be three or four lawyers in the province who are capable of handling a malpractice case. People who go somewhere else generally down the road are getting themselves in difficulty with somebody who has not handled it before. There are very few people who can handle that kind of specialized case. We understand that they turn away the large majority of people who come to them just because, for the case to be worth while, because you are looking at several years, and the Canadian Medical Protective Association litigates them very hard, you are looking at a case that may go right up through the Court of Appeal or the Supreme Court of Canada. Unless it is a pretty significant case and a lot of money, people will not pursue it.

You have to remember that in our system, the death of a child, death of an elderly person or many other things that people might regard as an affront or whatever, do not lead to major monetary damages. People, accordingly, are not advised and do not litigate.

Mr. Campbell: Then why are doctors' malpractice insurances going through the roof if nobody is litigating? I can think of two cases of doctors in my community, both of whom went to court and were found malpractising. There was no high-priced, city-slicker lawyer in Toronto handling the case. It was a local lawyer.

I am concerned about that and your impressions if they are different from mine. I am not trying to be argumentative, but I am certainly pointing out to you that maybe there are two standards of malpractice: one in Toronto and one in the rest of the province. I hope not. I do not want to tip the Ombudsman off to another area of concern.

Anyway, I am intrigued, in point (g), as to how the Ombudsman would deal with ethical issues rather than practical person-on-the-street kinds of difficulties, because that is his office setup. How would they deal with ethical issues: availability of abortion and experimentation? How would they be able to deal with that?

Mr. Beatty: I think we were just pointing out that it is an area where, again, there is a lot of public concern. Those complaints will come in if the Ombudsman's jurisdiction is expanded. How those would best be dealt with we are really not in a position to say. It is just something that we felt the committee should look at as something that expanded jurisdiction would require the Ombudsman to get into.

Mr. Campbell: Two last points. One is, you said that the board of directors of a hospital does not get involved in the day-to-day operation. You seem to be implying that somebody else, beyond the board of directors and administration, get involved in the day-to-day operation of the hospital in (a) and (b). Point (b) seems to be about the simplest thing to solve. I do not know if representation to the board of directors of a hospital would solve that almost immediately.

In our community the hospitals are all standardized. It is exactly the same hours for everybody. If that is not the case in Toronto, what would be the reason if they are not all standardized, relatively?

Ms. Steckle: I am not sure what the reason is. Some hospitals have visiting hours from 9 a.m. to 9 p.m., whereas others have them from 1 p.m. until 8:30 p.m. But the kinds of complaints that have come in have not necessarily dealt with the specific length of time of the visiting hours or the fact that there is no flexibility if the individual wants to stay beyond the time of the visiting hours.

Mr. Campbell: Again, maybe it is in my own community, but certainly where it is life-threatening, where the family is supposed to be there and the family is of support to the patient, I know the hospitals involved co-operate. They say, "My God, sure, if that helps a patient be well or be at least comfortable while they are in difficulty."

You say the hospitals in Toronto do not do that?

Ms. Steckle: No. I do not think I can ever generalize about all hospitals in Toronto. In a hospital situation you sometimes have wards where there are four patients in one room. If you have a family of six people wanting to visit one individual, there are three other people in that room whose needs need to be met and who may complain about that.

If there is no availability to move that particular individual into a semi-private or a private room, you start getting conflicts around whose needs we are meeting. Are we meeting this particular individual's needs or are we going to try to meet the needs of all people in the room?

I do not see that we are here as the Patients' Rights Association to resolve those problems. Complaints were brought to us is that there is an inflexibility; when people are trying to bend those kinds of rules, there seems to be an inflexibility.

Mr. Campbell: I really would like to clarify what you said earlier about your letters not being responded to. It would be interesting maybe to note in which categories they were not responding and which they were, because I, as a hospital administrator, would not want to talk to you if, for example, you were the administrator of a hospital that had abortions performed and you were getting complaints from people, or conversely, if you were in a hospital that did not do abortions and you had people complaining that you were not doing them. I certainly do not think that would be something I would respond to as an administrator, but I am not, so I am not sure. If that was the category of letters you were not getting responses to, I could understand.

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I guess the point I am making is that some of these categories seem to me to be some things that you, as a group writing a letter on behalf of a patient in one of these categories, may or may not have any reason or have any rights to have any of the information on, as the patient or the patient's family may not. I am just concerned that, not knowing which categories you are talking about in here, I find it difficult, unless I had the information, to know where those cases were coming from and why you were not getting responses.

I will tell you this. I feel better and better about my community's hospitals every minute after reading this brief. We do not have any teaching

hospitals. However, I would be concerned if a board of directors member or an administrator did not answer a question such as one complaining about students coming around and being part of the action.

Those are my comments.

Madam Chairman: I believe Mr. Philip had two final questions.

Mr. Philip: I suggest that the chairman could ask the questions and then I would not have to get back on the list, but anyway.

You mentioned that professionals are members of your association. Can you tell us how many professionals? What would they be: registered nurses, registered nursing assistants? Are there any physicians and surgeons?

Ms. Steckle: Yes, there are. We have physicians, registered nurses, physiotherapists, registered nursing assistants, social workers.

Mr. Philip: Do you ever advocate on behalf of staff in a hospital, staff who feel that something is changing that is not in either their interest and/or the interests of the patients?

Ms. Steckle: In fact, it is one of the reasons that I joined, yes. Also, it was a medical student who brought to our attention, I guess about six or seven years ago, the fact that anaesthetized women were being used for practice on pelvic examinations.

Mr. Philip: Oh, yes. That was the case that made all the newspapers.

Ms. Steckle: Students were being taught on anaesthetized women. It was a medical student who contacted us about that.

Madam Chairman: Are there any final questions from the committee at this time? Seeing none, thank you very much, Mr. Beatty and Ms. Steckle, for coming today. We will provide you with a copy of the brief from the Ombudsman on expanded jurisdiction, although it was very general. It was just an argument for us in the general area of public hospitals and where they thought their role could be. We will make sure you get a copy of that, and we do apologize that you did not have it before you came today, but in fact, your brief was more than fulsome.

If you do find you have a response in any way to the material contained in there, please just pass it along in writing to our clerk and we will all be sure to get hold of it, so that you will have an opportunity to add anything further you have.

Thank you very much. You have been the first organization that has come before us on this issue, and I think it was very beneficial for us.

Mr. Beatty: Thank you.

Madam Chairman: I have a few more items for the committee before we go. The clerk is going to hand something out, and in the meantime, I would like to just bring up with the committee a slight problem I have encountered.

As a result of our ad in the paper, we had an individual respond, and he was from the Ottawa area. Given that we had only one response from the Ottawa

area, I made the decision that we would invite him to come to Toronto, paying his way, and appear before us.

In addition to that, I felt that the letter he sent in reply to the ad did not direct itself to any of the three matters we are considering on expanded jurisdiction. In fact, his complaint seemed to be about other areas, not the areas in which we were inviting submissions from the public.

We have now contacted him, both in writing and the clerk by phone, and told him that if indeed he still wants to pursue and present in front of the committee, although I am somewhat concerned that he is not presenting on the issues we are dealing with, then he would have to travel to Toronto. He is opposed to travelling to Toronto and cannot understand why we are not going to Ottawa. My initial inclination would be that if he were not prepared to come at our expense to Toronto, given that I am unsure whether he is directing his mind to what we are looking at in the next few weeks, I would be reluctant for us to all go there for his presentation.

We have something in writing from him, but it is unclear. I do not think he has summarized his points in it, which might be helpful to ascertain what his concern is. I would just like assurance from the committee saying that if he does not come to Toronto, he will have to put anything further in writing. As I say, he was somewhat upset that we would not go to Ottawa to hear him, and I would just like the committee's backing on this if it is appropriate.

Mr. McLean: Do you have a brief from him?

Madam Chairman: We have two pages of material that express his concern at various people, judges and the hierarchy of decision-making which goes on in Ontario, but I have not identified anything which really deals with the Ombudsman or the three areas we are dealing with. It is a two-page document in which he has outlined some of his concerns.

Mr. McLean: I support the chairman's position.

Madam Chairman: Any opposed? Thank you very much.

The other thing is that we have just handed out the letter we received from the Ministry of the Attorney General, from Ian Scott. This letter, as you will recall, was requested by myself, at the committee's direction, last week. It came as a result of the Ombudsman's presentation and the expression of his desire that certain amendments to the Ombudsman Act be introduced in the Legislature by the Attorney General and that these amendments be forthcoming as soon as possible.

The request was that we get a response from the Attorney General as to what his intentions were or what his plans were with respect to the amendments to the Ombudsman Act and when, if at any time, we can expect these amendments to be introduced in the Legislature or if in fact anything had been done, because Dr. Hill was concerned that a number of years have passed since his initial conversation with the Attorney General on these points.

I did speak with the Attorney General before he sent the letter. He cannot recollect that there were 60 amendments; in the minutes we sent to him, there had been a reference to 60 amendments or so. He could recollect about 20 or a package which had been sent along by the Ombudsman, but he was aware of these amendments. He assured me that they have been looking at them. I think as a result of that he went to cabinet and asked for a time line. He has now

responded in writing and the letter is before each of you. I am not sure if this letter is a satisfactory reply to what our concern was. Are there any comments from the committee on this at this time?

Mr. Philip: Have we come to any date? I can recall asking Mr. McMurtry for a date.

Mr. Elliot: You are dating yourself. You had better be careful.

Mr. Philip: I was elected at a young age. I was a protégé politician, I guess.

I cannot help but be somewhat amused at "before or just after Christmas," that choice of words. That means we will get it in the fall session or in the spring session, he is not sure which.

Mr. Tatham: Is that this Christmas?

Madam Chairman: We have got some indication that it might be in the next decade.

Mr. Philip: I would suggest that you write back to him and say that members of the committee were concerned that it be Christmas 1988 he is referring to.

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Mr. Carrothers: I wonder if the reference to "this fall" two lines prior to that would sort of clarify the Christmas being referred to, Mr. Philip. I am not sure you can make much of a case of ambiguity there.

Mr. Philip: After all the delays we have had, I am just glad he did not write back and say "in the fullness of time," which is what they used to write over the years.

Madam Chairman: I think too—and I am not sure if in this discussion there was anything—there is still some discussion as to all the amendments. He expressed to me that he did not view them as much of a housekeeping matter, as perhaps the Ombudsman had indicated to us. I think they were well-rounded amendments but I have the impression that a good number of them were housekeeping. More of his conversation leaned on the fact that he felt a number of them were very substantial amendments. He did not consider them just housekeeping. That was his opinion and his recollection. I believe he has directed his mind to this in the last week.

Mr. Philip: Do I take it he will also consider whatever amendments we are proposing as a result of these hearings, and not just the ones his various committees are working on? That is a clarification you might want to obtain.

Madam Chairman: I would not assume that he would be considering anything that emanates from this as part of this package. I think we have to see what our time line is for completing this. We may in fact not have completed our deliberations on this until November or December. My understanding would be that he would not anticipate this to be part of the package. I think we could, if ready, present it to him; but I understand he would not have thought of that.

Mr. Philip: I think the point should be made to him that we are

likely to be coming up with recommendations. We know that a major act gets amended, if lucky, every 10 years. If he is going to do the amendments, it makes some sense to take into consideration the views of the committee on this area and do it all at once, because some of the amendments he may be making may in fact be counterproductive to whatever the committee may be saying.

Madam Chairman: Are you suggesting that he delay consideration of his amendments until we are in a position to finish our report?

Mr. Philip: No, I am not suggesting that at all. I am convinced we can get our report completed by early fall, or middle fall anyway. Hopefully, if he brings in a bill on this once every 13 or 14 years, whatever we are suggesting will also be considered.

Madam Chairman: I would appreciate comments on the statement, but I also want to let you know we have had contact from the Ministry of the Attorney General on our deliberations on expanded jurisdiction. They are monitoring what we are doing over these few weeks. While they have chosen not to make a presentation to us, they have been very interested in the deliberations. I do not know whether that is a reflection of any of our actions.

Mr. Philip: I am certain he is sitting in his office watching at this very moment.

Mr. Tatham: Would you monitor this situation, let us say, in a month's time, check it every month, just to see how close it is coming?

Madam Chairman: The amendments to the Ombudsman Act which are referred to in this letter?

Mr. Tatham: Just put a red flag up every so often; pick it up and say, "Hey, how are we coming?"

Madam Chairman: I have been red-flagging this for a little while, but I will continue and endeavour to do this.

Mr. Tatham: Just a thought.

Madam Chairman: I will use a red flag.

Is there any comment on Mr. Philip's point? His suggestion was—I would hate to rephrase it—that we write a letter expressing our desire that the recommendations which emanate from our deliberations over expanded jurisdiction be considered for inclusion in the amendments to the act.

Mr. Campbell: The Ombudsman's office has been waiting patiently for quite some period of time for these ones. I think it kind of prejudices the case if—I do not think it will be the case—there are no recommendations for expanded jurisdiction. You have told the Attorney General (Mr. Scott), then, to wait.

I think it would be better to press ahead with whatever deliberations we are doing now and try to help to meet that deadline, once you figure out what it is, because by giving someone an opportunity to put it lower on the priority level, that is basically what you are doing. You are saying: "Wait for us. We really want this, but wait for us." I am just concerned that we are giving an excuse for someone to move it down the ladder by saying, "Well, the

committee wants to consider some further stuff." Those are just my observations.

Mr. Philip: I can wait until we finish the report and then flag it to him if that will make it easier on the committee. I think that should overcome Sterling's objection. It may also cut the debate short on that point.

Mr. Campbell: Sure.

Mr. Carrothers: I was just going to more or less concur with Mr. Campbell. Knowing the cabinet process a bit, I think that with all of the other priorities, it would be a bit unrealistic to think that if the Attorney General is shooting to have a bill possibly towards the end of the fall session that any report we come out with in the fall could be incorporated into that bill.

That is not the way the process works. I think it is unrealistic to be expecting that. I think, and I agree with Sterling, that it would just be delaying this process by trying to incorporate the recommendations of our deliberations into this bill at this time.

Mr. Philip: We also have the ability, since the bill will come to this committee, of course, to amend it as per our recommendations.

Mr. Elliot: I would like to concur with the idea that was just put by Mr. Philip to withdraw the suggestion with respect to communicating on the present deliberations. But I would think that it would be in order, still, to write an acknowledgement of this August 11, 1988 letter to the Attorney General's office with a view to being very positive and thanking them for the prompt reply and looking forward to something significant, probably before Christmas 1988.

Mr. Carrothers: The session may extend past New Year's.

Mr. Elliot: The supplementary comment I was going to make with respect to that is that if we get the co-operation from the opposition that we did this particular year last, we may be working through January and February and it might be in order to talk about this in January or February.

Mr. Bossy: Usually it ends up that if you wait to make a statement, and after you have cross-conversations, that everything has been said that you wanted to say. I am just saying that Mr. Philip sort of threw it in as an addition.

I am sure that when the Attorney General brings forth a bill, it will be referred to this committee. Then, at that time, it will surely give us ample time. If we need to add to it by way of further amendments, we should be able to do it. I am looking for a bill to be tabled. Then let the committee deal with it and let us add what we feel is right.

Madam Chairman: On that point, too, I wanted to say that, if you recollect, I did write to the Speaker and expressed our interest in dealing with this bill when it does come through so it does not get sent to some other committee. We will continue to try to express our interest and enthusiasm.

Mr. Campbell: The standing committee on administration of justice is a little busy right now.

Madam Chairman: That is right. The justice committee is busy.

Mr. Campbell: Yes, because you do not know, and it is too short notice. OK, I withdraw that. That is fine.

Madam Chairman: We did ask them what day they would like to come in on a selection of days. They choose, and it just as magically appeared that we have filled in our spots. It was amazing how it happened, but we were fortunate and it did happen. In fact, someone new may come forward and we may have more people we want to hear from.

So it may change. I just wanted you to be aware of the fact that Monday right now is the agenda. I assume we will be here. There is no reason for me to think that it will be settled unless somebody tells me, but I do have an indication verbally that they are working on it.

Mr. Campbell: OK.

Madam Chairman: Great. We are adjourned now until tomorrow at 10 o'clock.

The committee adjourned at 3:34 p.m.

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Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on the Ombudsman
Estimates, Office of the Ombudsman

First Session, 34th Parliament
Wednesday, April 13, 1988

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Wednesday, April 13, 1988

The committee met at 10:10 a.m. in committee room 2.

After other business:

ESTIMATES, OFFICE OF THE OMBUDSMAN

Madam Chairman: We have on the agenda today discussion of the Ombudsman's estimates. Although the year has passed and there is a motion before the House to approve all estimates that have not been dealt with, I thought it would still be good for us to have some kind of budgetary fiscal discussion with the Ombudsman's office to get some familiarity with it for the new members. The members who have been on this committee for some time will be a bit more familiar with it in any event. I think it could be a very helpful interchange and exchange of ideas.

The clerk is distributing the background information that was submitted by the Office of the Ombudsman to the Board of Internal Economy. It is a little more detailed than the summary you have seen before.

We have Eleanor Meslin and Allen Mills, Controller of the Ombudsman's office, with us today.

Eleanor, would you like to start?

Mrs. Meslin: Yes, I would like to summarize a few things that may help you to make some evaluation of these estimates. The year 1987-88, which is the one we are speaking of, was a year for the Ombudsman of consolidation and not of growth. All program expansions were achieved by reallocation of existing human and financial resources. There was no increase in budget sought at that time and the staff complement remained the same at 122.

Our salary ranges are identical to those used by the public service. Zero-base budgeting involving all our managers has proved itself and will continue to be used. There were two unreported items in the estimates. One was a \$21,000 item that was to be returned to the Treasurer and was, of course, from our approved estimates of 1986-87, as a result of the cancellation of the levy for the public service superannuation fund. We had that money given to us and we gave it back because the levy was cancelled.

The second unrecorded item is as a result of the change in the Canadian Radio-television and

Telecommunications Commission's regulations permitting Bell Canada to surcharge \$1.50 for each collect call. We introduced an Inwats 1-800 line. This made our office more accessible and achieved a saving of approximately \$6,900 in the year.

In terms of our native commitment, the service to the native communities was strengthened by the deployment of a northern native liaison unit, so that we have one Toronto-based employee and one Timmins-based employee functioning in the native communities. The initiative for the northern native liaison unit was in response to the Ombudsman's and standing committee's visits in the fall to a number of northern reserves.

In the area of our part-time field officers, the cost benefit to date has justified the existence of those field officers. Last fiscal year, that is the fiscal year we are speaking of, the Windsor, London and Sault Ste. Marie field officers handled a total of 863 complaints with an additional 50 files in progress. In the case of the Windsor officer, there was a 78 per cent increase in complaints received from the area after we put the officer in place.

A total of 180 community outreach projects have been completed by these officers. Since the closing of the regional office in North Bay and its reopening as a field officer service, the same complaint-handling workload as prior to closing has been maintained. As many as 30 outreach contacts were made in the two months after closing as were made in the entire eight-month period prior to closing, so that the reintroduction of a part-time field officer into North Bay has kept the workload and increased the outreach workload.

By the London officer alone, \$23,344 was acquired for complainants as a result of the intervention of this worker in nine separate cases. In addition, the referrals that we have made in these field offices with MPPs has added up to more than 100 between mid-August 1986 and January 1987, just with the establishment of those field officers.

1020

In conclusion, the Ombudsman's commitments upon taking office remain unchanged. He had three commitments: (1) to bring a sound system of fiscal control to the Office of the

Ombudsman; (2) to make the services of the office more accessible to the public; and (3) to improve staff management, morale and efficiency.

In addition, to date, there have been no criticisms of this office by the Provincial Auditor, and we are certainly hopeful that this will continue to be the case. The reallocation of existing human and financial resources, combined with sound management and planning policy, is showing the desired results. We have a strengthening of the administration in the office and a greater service to the public. We are doing more without requesting an increase and we hope we are doing it better.

Madam Chairman: Thank you, Mrs. Meslin. Mr. Lupusella.

Mr. Lupusella: Thank you very much for your presentation. I noticed that, on the paper which is before me, the actual estimated cost for 1986-87 for the total operation of the office is \$6,546,700 which, of course, is increased from the actual cost of estimates in 1985-86 of over \$6,052,000. Now, I understand that in northern Ontario, in relation with native groups, you are planning to establish a northern native liaison unit composed of two employees already on staff. The total cost appears to be \$95,000.

Mrs. Meslin: Yes.

Mr. Lupusella: How are you going to spend the remaining increase?

Mrs. Meslin: That is not an increase; that is a reallocation. What we are doing and what we have done in previous years is that we have reduced some of our complement in one area in order to put new complement in another, so that when someone leaves, we often do not fill the vacancy if we can manage it, in order to place another position, as we did with the northern native liaison officer. So the figures you see that look like an increase are just the regular cost-of-living increase that the government grants us. It is not something we ask for; it is in the normal process. We asked for no money.

Mr. Lupusella: OK. I was confused on the two figures.

Mrs. Meslin: Yes, I can understand that.

Mr. Lupusella: I thought there was an increase. In fact, it is a reallocation of funds.

Mrs. Meslin: It is just a reallocation of funds.

Mr. Lupusella: OK. Thank you.

Mr. Philip: I have a few questions. Has there been an evaluation done yet of the additional native programs officers?

Mrs. Meslin: We have done an evaluation of our Toronto officer because he has been with us for three years. The evaluation that was to be done in our Timmins office with Mary Iahtail, whom I think you might have met, had to be held off because she accepted a one-year secondment to Moosonee to a special intergovernmental project and she asked that the evaluation await her return. So we now have a temporary replacement for her.

Mr. Philip: I was thinking less of the personnel per se, although you cannot remove them from the equation, and more in terms of the needs that are being met, the efficiency in meeting them. Has an evaluation been done of the operations of those officers, of those positions, notwithstanding the personnel in the position?

Mrs. Meslin: I understand. We have not done specific evaluations. My feeling was that an evaluation, to be a reasonable one, had to include the people involved. We have had excellent feedback, especially from the northern areas we visited that now are being visited on a much more regular basis. When I say "regular," I mean maybe every five months, whereas there had been no visits at all before the committee eventually went up there. We have had a number of cases referred to us because of that native officer visiting them.

Mr. Philip: Are most of the cases still nonjurisdictional?

Mrs. Meslin: Yes.

Mr. Philip: What is your success in passing those on to the federal authorities and obtaining any kind of results?

Mrs. Meslin: On at least two occasions, Dr. Hill has felt that the issues were important enough that he authored letters directly to the minister; at the time I think it was Mr. Crombie. He authored letters himself asking for particular interest to be paid, and Mr. Crombie wrote back very positively.

Mr. Philip: Is there any feeling yet of any kind of movement on the part of the federal authorities concerning the need for a federal Ombudsman, or are you still at the same stalemate we were at for the last 10 years?

Mrs. Meslin: With the present federal government we appear to be at the same stalemate. They do not see a need for it, even though the last meeting of Canadian ombudsmen sent another letter urging that this occur.

Mr. Philip: In terms of the types of cases obtained as a result of the extension into northern

native programs, what are the chief complaints? Is there any pattern as to where the major problems seem to lie?

Mrs. Meslin: The major complaints appear still to be with the Ministry of Natural Resources, because it touches more often on a number of the areas that affect natives. But we have had a broad cross-section of complaints. Some are employment complaints that are quite interesting, which we are also looking into.

Mr. Philip: So there are really no what you would call systemic patterns you could identify that could be corrected through general administration changes of any sort?

Mrs. Meslin: Not that we have seen, with the exception of housing, which we will be reporting on.

Mr. Philip: With the Windsor office, is the big complaint similar to what you are getting in the Toronto offices and the Sudbury offices, the major one being worker's compensation?

Mrs. Meslin: Precisely.

Mr. Philip: So there is no particular pattern there that is any different from any other industrial city.

Mrs. Meslin: No. It is very interesting. Because we now have the new part-time offices, we have been looking to see if there are areas in particular places that differ, and they do not to any great extent.

One of the positive aspects seems to be that the one-on-one relationship and outreach is making people a little more aware of our jurisdiction, so we do get proportionately more jurisdictional complaints, although the nonjurisdictional ones are still high. If you look at them in comparison to Toronto, there are fewer, proportionately, than there were, and I think that is because the individuals are going out to these various communities and familiarizing them with our jurisdiction.

Mr. Philip: So you are saying there are fewer nonjurisdictional complaints in Windsor than in Toronto?

Mrs. Meslin: On a proportional basis, yes.

Mr. Philip: Yes, that is what I mean, percentage-wise.

Mrs. Meslin: Yes.

Mr. Philip: You have been able to keep your costs of operations down. Do you have any pattern as to the waiting time now for resolving problems? Is it increasing or decreasing? Has your economy drive in any way affected the

length of time that a client has to wait in order to have his case dealt with?

Mrs. Meslin: I would be glad to answer that, but I think that Dr. Hill wants to address it in great detail in his statement to you next week and in the follow-up, so I would appreciate it if you would wait for that.

1030

Mr. Philip: OK. One of the things I would like to discuss with Dr. Hill next week, and you may have some comments now, is that there is some very interesting work being done in the regulations committee. I think there is concern all over the world regarding the accountability of regulators and of people about civil servants who are able to have a substantial impact on people's lives through the regulatory process without any kind of really strong supervision either by ministers or even by deputy ministers sometimes, or by the legislative process. Are you getting very many complaints concerning the abuse of power or of the regulatory process, and is this an area that would be of concern to the Ombudsman?

Mrs. Meslin: We always get some. They are not overly significant, but certainly some changes in the regulatory process might be worth while. One of the suggestions, I think, that is coming up in that committee report would have committees reviewing these regulations, and the administrative fairness that goes along with them. That would go a long way to helping those problems. From my own point of view—the Ombudsman has not seen the report, but I have seen it—I think that is certainly very highly commendable and supportable.

Mr. Philip: I think what you have seen, in fairness, is not the report but the draft research of the things we are dealing with, because we have not written the report yet.

Mrs. Meslin: Yes, that is true. I am sorry.

Mr. Philip: Are there any particular recommendations you would have that might be useful to the committee? I think the Ombudsman committee, the public accounts committee, the legislative committee and the committee dealing with regulations should be concerned about that report. It will have an impact on all of us. Do you have any recommendations, or would you prefer to have Dr. Hill comment on that?

Mrs. Meslin: I think that Dr. Hill should comment on it. Just in passing, one of the things I noticed that was mentioned in the research was notice being given through the Ontario Gazette. I would hope that when it dealt with Ombudsman

matters, the Ombudsman would be notified prior to that. I do not know whether it would be necessary to go so far as reporting it in the Gazette or not.

Mr. Philip: I just do not see how that becomes practical, since you would get involved only if there were complaints, would you not? I am sure you are not going to review all the regulations.

Mrs. Meslin: I am talking about proposed rules that may be considered. If I read it correctly, it says that these proposed rules would be published in the Gazette for people to respond. All I am suggesting is that although there is no opposition to that, prior to that I would hope the Ombudsman would have the opportunity to see proposed rules that affect the Ombudsman.

Mr. Philip: So you would like to receive all of the regulations and comment on them?

Mrs. Meslin: Only those that may affect the Ombudsman, certainly.

Mr. Philip: But the only rules that would affect the Ombudsman would be those regulations that would be brought down by the Ombudsman, would they not?

Mrs. Meslin: No. Your committee has previously brought down regulations that affect the Ombudsman.

Mr. Philip: I think we are getting into a semantic problem as to what is a regulation and what is not.

Madam Chairman: Thank you, Mr. Philip. Any further questions?

With the worker's compensation, I think we have been getting a little smaller percentage of complaints in regard to the Worker's Compensation Appeals Tribunal. I was wondering if you expect that to decrease significantly. What will your role be at that time? My main concern is that if it does decrease, since this has been a major proportion of your work, you will not need as many people on staff to deal with the complaints.

Mrs. Meslin: Once the Worker's Compensation Appeal Tribunal became effective, we knew that that would be the case, although we are now getting a number of those complaints to us. In other words, a decision of WCAT which a complainant or an employer disagrees with comes to us. It is not in the same numbers and Workers' Compensation Board complaints are decreasing, but when we originally realized that, that is one of the ways in which we could reallocate.

We took some of our staff from the WCB team and spread them out elsewhere where there was a vacancy, instead of hiring on extra people, and

we have not continued to hire on the extra staff. We have taken that staff complement and put them into things like the northern native liaison office. It has given us an opportunity to juggle, without hiring, into that group. I think that group originally had 12 people in it and it now has eight, so we are very aware of that.

Madam Chairman: In the public education programs, you say you have an outreach program, but has there been much increase in emphasis or concentration on any kind of public education programs by the Ombudsman's office?

Mrs. Meslin: One of the things Dr. Hill has done, and he will refer to it in a little more detail, is to make specialized areas of public education. He has introduced an ethnocultural officer who will do public education specifically in various visible minority and ethnocultural communities. That is another reallocation of a person who was doing one job to another job.

So outreach has expanded in that area and it has expanded in the disabled area, because we have one officer who works with only developmentally and physically handicapped groups, involving them in our outreach organization.

Madam Chairman: That is great. Any further questions on estimates from the committee?

Mr. Bossy: I would move that we approve the estimates.

Madam Chairman: Mr. Bossy has moved that we approve the estimates. Any seconders? Mr. Carrothers seconds. Any further discussion?

Mr. Philip: I think one of the reasons that the questions are few at this time is because the Ombudsman himself is not here. I realize why he is not here, but we have to deal with the estimates today because of the motion being brought down later today that the estimates have to be approved.

I think it should go in the record that is perhaps why the members do not have quite as many questions as we normally have on estimates. We are not in any way shirking our responsibility. We will be asking those questions when the Ombudsman does appear. There are a lot of policy issues that I do not think it is fair to ask now.

Mrs. Meslin: Just for the committee's clarification, I think the members will have a very good opportunity to ask, because Dr. Hill's statement, which is very, very full, looks at the last year in a great deal of detail. It will give the committee members opportunities to ask the questions that they might have otherwise in this case.

Madam Chairman: Thank you, Mr. Philip. We will make mention of that. Given the motion before the House, if we had not dealt with the estimates today, there would be really no other opportunity.

Mr. Philip: Have you received a letter from the chairman of the standing committee on regulations and private bills?

Madam Chairman: Yes, I have. I received it from the clerk. Our clerk is out now making copies of the draft research. I thought that since we did start the discussion with it today, perhaps if the committee members had a copy of it as well, then they too would be following your discussion if you pursue it further with the Ombudsman next week.

Mr. Philip: I just thought that members of this committee should be aware of what the regulations committee is considering. I found it fascinating. It is the first time I have been on the committee and I happened to come along right at the time when it was dealing with some of the theoretical aspects of regulations. It fits in nicely with this committee and with some of the other parliamentary reform that other committees are looking at.

That is why I suggested that perhaps this committee should look at it from an Ombudsman's point of view. I think the chairman and members of that committee are quite open to any suggestions that we might have from an Ombuds-

man's point of view. It does lead nicely into some of the things we may be concerned about.

1040

Madam Chairman: Great. Thank you, Mr. Philip. I had an opportunity to look at it briefly yesterday. I think the committee would enjoy just even glancing over it in more detail for those who are truly interested in the regulation aspect of this.

Mr. Philip: You will notice when you go through it that some of the recommendations are contradictory. So do not be upset by it. It means that the committee is going to have to deal with which one of several options that contradict one another makes the most sense.

Madam Chairman: There being no further discussion, could we have a vote on the motion before the committee, which is to accept the estimates.

All those in favour?

All those opposed?

Motion agreed to.

Madam Chairman: I do not think it will be necessary that we report to the House but I thought it advisable that we do have a vote in case it does become necessary.

The committee considered other business at 10:43 a.m.

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STANDING COMMITTEE ON THE OMBUDSMAN

Chairman: Nicholas, Cindy (Scarborough Centre L)

Vice-Chairman: Elliot, R. Walter (Halton North L)

Bossy, Maurice L. (Chatham-Kent L)

Carrothers, Douglas A. (Oakville South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Henderson, D. James (Etobicoke-Humber L)

Lupusella, Tony (Dovercourt L)

MacDonald, Keith (Prince Edward-Lennox L)

McLean, Allan K. (Simcoe East PC)

Philip, Ed (Etobicoke-Rexdale NDP)

Pollock, Jim (Hastings-Peterborough PC)

Clerk: Decker, Todd

Staff:

Evans, Catherine A., Research Officer, Legislative Research Service

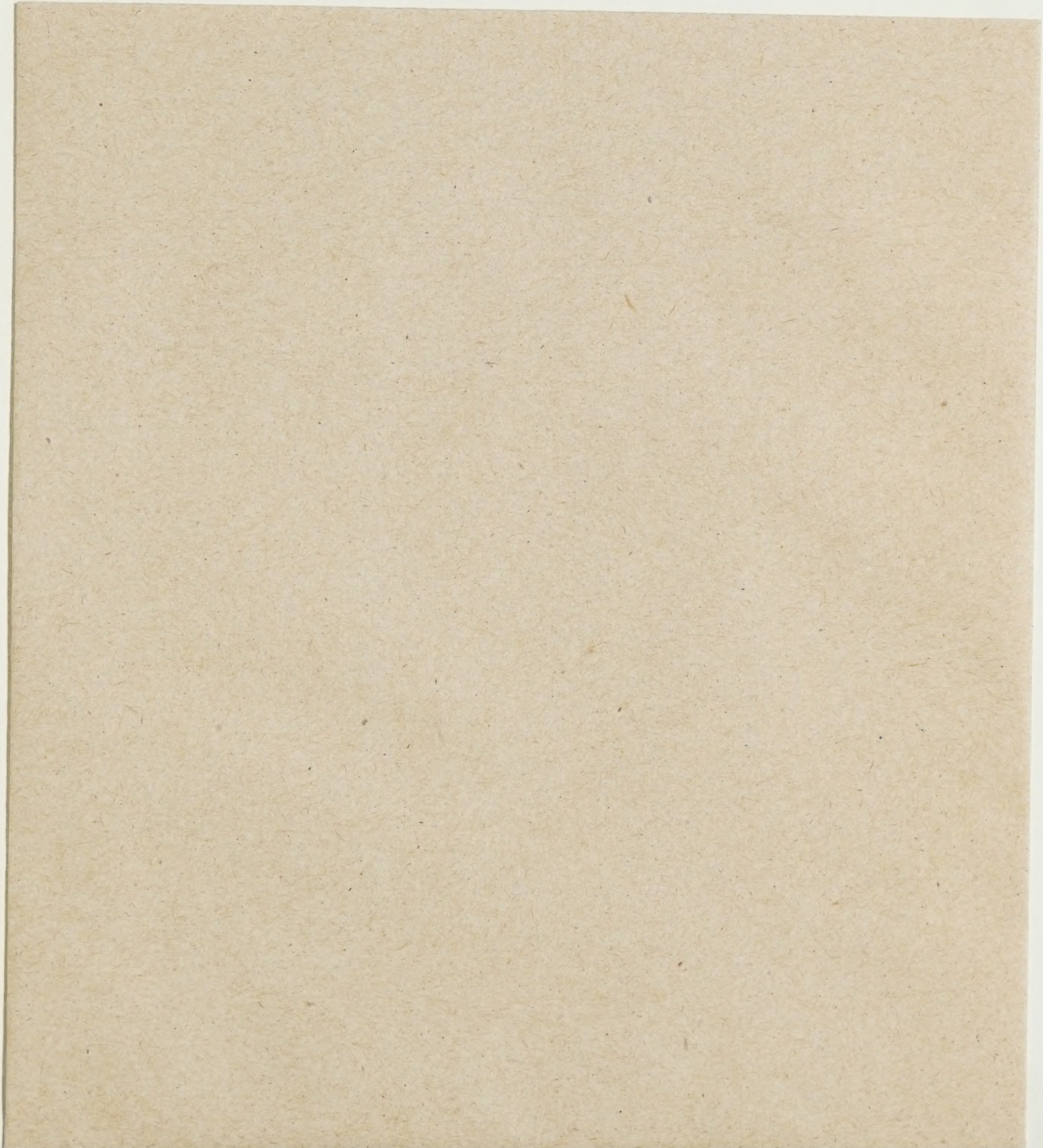
Witnesses:

From the Office of the Ombudsman:

Meslin, Eleanor, Executive Director

Mills, Allan, Controller

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